

Exhibit 11

1

08:55:02AM

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

AMBER DURHAM,	:	Case
	:	No. 2:21-cv-05417
Plaintiff	:	
	:	
vs.	:	
	:	
INSTANT BRANDS,	:	
INC.,	:	
	:	
Defendant.	:	

- - -

Thursday, September 15, 2022

- - -

Remote videotape videoconference
deposition of DAVID RONDINONE, taken pursuant
to notice, at the location of the witness in
Berkeley, California, on the above date,
beginning at 12:59 p.m. Eastern Standard Time,
before Jared E. Bittner, RPR-CSR and Notary
Public.

- - -

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18 - - -

<p style="text-align: center;">3</p> <p style="text-align: center;">I N D E X</p> <p>1 WITNESS: PAGE</p> <p>2 DAVID RONDINONE</p> <p>3 By Mr. Callahan 5</p> <p>4 - - -</p> <p>5 EXHIBITS DESCRIPTION PAGE</p> <p>6 <u>Rondinone-1 43 Page Plaintiff's Expert</u> Disclosures 9</p> <p>7 <u>Rondinone-2 3 Page Amended Notice of</u> Video Deposition 11</p> <p>8 <u>Rondinone-3 1 Page Inspection Notes</u> 27</p> <p>9 <u>Rondinone-9 Color Photograph</u> 20-5290.79D EX UID11464460.1.2 Pressure cooker lid w base 106</p> <p>10 <u>Rondinone-10 Color Photograph</u> P4250287-test 141</p> <p>11 <u>Rondinone-11 Color Photograph P4250156</u> 149</p> <p>12 <u>Rondinone-12 Color Photograph P4250169</u> 149</p> <p>13 <u>Rondinone-13 Color Photograph P4250230</u> 152</p> <p>14 <u>Rondinone-17 Color Photograph Float</u> Valve B 168</p> <p>15 <u>Rondinone-18 Color Photograph P4250402</u> 178</p> <p>16 <u>Rondinone-19 Color Photograph P4250403</u> 183</p> <p>17 <u>Rondinone-20 Color Photograph IMG 4992</u> 218</p> <p>18 <u>Rondinone-21 Color Photograph</u> P1120134_resize 222</p> <p>19 - - -</p>	<p style="text-align: center;">5</p> <p>1 ...DAVID RONDINONE, after having</p> <p>2 been duly sworn, was examined and deposed as</p> <p>3 follows...</p> <p>4 - - -</p> <p>5 BY MR. CALLAHAN:</p> <p>6 Q. Good, I guess good morning for you.</p> <p>7 Good afternoon for the rest of us. My name</p> <p>8 is Dennis Callahan. As you know, I represent</p> <p>9 Instant Brands. You're here for a discovery</p> <p>10 deposition. You understand that?</p> <p>11 A. Yes.</p> <p>12 Q. And what did you do to prepare for</p> <p>13 today's deposition?</p> <p>14 A. I reviewed my file. I reviewed an</p> <p>15 exemplar pressure cooker. I spoke with Adam</p> <p>16 yesterday for about five, ten minutes, and I</p> <p>17 think that's about it.</p> <p>18 THE VIDEOGRAPHER: Off the record,</p> <p>19 1:01.</p> <p>20 (Recess; 1:01 p.m.)</p> <p>21 - - -</p> <p>22 (Resumed; 1:02 p.m.)</p> <p>23 THE VIDEOGRAPHER: Back on the</p>
<p style="text-align: center;">4</p> <p>1 THE VIDEOGRAPHER: On the record.</p> <p>2 The following is a videotape deposition. My</p> <p>3 name is Rick Kanzinger, Jr., and I'm the</p> <p>4 videotape operator. This deposition is being</p> <p>5 taken on Thursday, September 15th, 2022,</p> <p>6 scheduled for one o'clock p.m. via Zoom.</p> <p>7 Today's case is Amber Durham versus Instant</p> <p>8 Brands, Inc., Civil Action No. 2:21-cv-05417.</p> <p>9 This is filed in the United States District</p> <p>10 Court Reporter in the Eastern District of</p> <p>11 Pennsylvania, and present for the taking of</p> <p>12 this videotape deposition are the witness,</p> <p>13 David Rondinone.</p> <p>14 Would counsel please state their</p> <p>15 names for the record?</p> <p>16 MR. CALLAHAN: Dennis Callahan for</p> <p>17 Instant Brands.</p> <p>18 MR. KRESS: Adam Kress on behalf</p> <p>19 of the plaintiff, Perlock VJ.</p> <p>20 THE VIDEOGRAPHER: The court</p> <p>21 reporter is Jared Bittner. Would the court</p> <p>22 reporter please swear in the witness?</p> <p>23 - - -</p>	<p style="text-align: center;">6</p> <p>1 record, 1:02.</p> <p>2 BY MR. CALLAHAN:</p> <p>3 Q. Okay. So we had a slow start and a</p> <p>4 quick interruption. So to prepare you</p> <p>5 reviewed your file. You spent 10 or 15, or</p> <p>6 excuse me, five to ten minutes speaking with</p> <p>7 Mr. Kress and you looked at an exemplar unit?</p> <p>8 A. Yes.</p> <p>9 Q. Anything else?</p> <p>10 A. I spoke with Mr. King in my office who</p> <p>11 worked on this project with me just as I was</p> <p>12 reviewing, but that was sort of my part of</p> <p>13 the review of the file.</p> <p>14 Q. How long did you spend reviewing the</p> <p>15 file?</p> <p>16 A. You know, I don't know, probably a few</p> <p>17 hours last week and a few hours this week.</p> <p>18 Q. A few meaning what?</p> <p>19 A. I have no specific number.</p> <p>20 Q. You can't tell me how long you worked on</p> <p>21 it?</p> <p>22 A. No, not exactly. I could say it was a</p> <p>23 few hours meaning probably one to five hours</p> <p>24 last week and one to five hours this week.</p>

7

1 Q. Do you keep time records?
 2 A. I do.
 3 Q. Did you happen to record your time?
 4 A. I do.
 5 Q. All right. Do you have those records
 6 available? Could you look up how much time
 7 you spent?
 8 A. My bookkeeper could. I could ask her to
 9 do that. Yeah, yeah, she could do that. I'm
 10 not sure how up to date her records are, like
 11 they may not include yesterday or today, but
 12 I could ask her to look up what the -- what's
 13 in the, what's in the system.
 14 Q. What -- what examination -- what
 15 exemplar did you look at?
 16 A. Oh, I think it was a, a 60 Duo Plus.
 17 Q. Do you know the manufacture date?
 18 A. I don't recall the date, no.
 19 Q. Do you know how much time you spent
 20 altogether working on this matter in person?
 21 A. I do not. I do not.
 22 Q. Do you know how much time Berkeley
 23 Engineering spent working on it?
 24 A. I do not, but our invoices would reflect

8

1 that.
 2 Q. Do you plan to do any additional work
 3 related to the Durham matter?
 4 A. Well, I plan to review what any other
 5 experts have to say. If they say something
 6 that I feel requires some type of analysis or
 7 work to address I would do that, and if I'm
 8 asked to prepare some kind of demonstrative
 9 for trial I would do that, and then I guess I
 10 would actually probably review. If it went
 11 to trial I'd do another, another file review.
 12 Q. So you said if you were presented with
 13 an expert report from Instant Brands, you'd
 14 review that and possibly create a
 15 supplemental report?
 16 A. Well, it might not be a report. It
 17 might be deposition transcript or his file or
 18 something like that. I don't know what's
 19 going to be presented to me.
 20 Q. All right. But you haven't seen
 21 anything from the defense expert yet?
 22 A. I only saw I think videos and photos
 23 that he took at his inspection. That's by no
 24 means his complete file, but there were

9

1 videos and photos.
 2 Q. But you haven't seen a report?
 3 A. I don't think so.
 4 Q. I am going to share my screen.
 5 Can you see that, sir?
 6 A. I can.
 7 Q. Plaintiff's Designation of Expert
 8 Witness, is that what you're seeing?
 9 A. That is what I see.
 10 Q. Have you seen this document before?
 11 A. Possibly. I don't have a specific
 12 recollection, but I've seen a lot of these,
 13 so it's possible I've seen it.
 14 MR. CALLAHAN: Okay. For the
 15 record, I'm going to mark the report and
 16 disclosure or the entire designation package
 17 I suppose as Exhibit 1.
 18 (Exhibit Rondinone-1 was marked
 19 for identification.)
 20 BY MR. CALLAHAN:
 21 Q. And if we scroll down through this, this
 22 is you. You're designated as an expert
 23 witness. Do you see that?
 24 A. I do see that.

10

1 Q. Okay. And if we jump ahead, whoops,
 2 there is your report beginning on Page 5 of
 3 this exhibit. Do you see that?
 4 A. Yes.
 5 Q. Okay. And this is signed by you and
 6 signed by Derek King?
 7 A. Yes.
 8 Q. And if we look at the report it is, has
 9 page numbers 2, 3. I'm going to skip ahead.
 10 This is the final page of the report, Section
 11 7, conclusions and opinions. This is on Page
 12 12; right?
 13 A. Yes.
 14 Q. Okay. Is this your full report?
 15 A. Hold on. I think it is. Let me just
 16 pull up my PDF real quick. That sounds
 17 correct. Yeah, I think that's right. By the
 18 way, I did pull up a PDF of just the report
 19 and I did just look at that.
 20 Q. Okay. As part of your preparation you
 21 reviewed your report?
 22 A. That's true.
 23 MR. CALLAHAN: Okay. Hold on a
 24 second. I need to find a document already.

11

1 I've already lost a document. All right.
 2 We'll find it. Let's go back to the first
 3 page of this. This is going to be Exhibit
 4 No. 2.

5 (Exhibit Rondinone-2 was marked
 6 for identification.)

7 BY MR. CALLAHAN:

8 Q. It's a document entitled, "Amended
 9 Notice of Video Deposition."

10 Do you see that, sir?

11 A. I do.

12 Q. Have you seen this document before?

13 A. I think I've seen something like it, if
 14 not this exact one. The one I recall
 15 seeing -- yes, I think this was it.

16 Q. Well, let's see if I can refresh your
 17 memory by skipping to the addendum which
 18 lists a series of documents, requests,
 19 Paragraphs 1 through 14. Does this refresh
 20 your memory if you've seen it?

21 A. No, because I've seen, I've seen lists
 22 that look like that many, many, many times.
 23 I don't have a specific recollection of this
 24 particular list.

12

1 Q. All right. First, if it comes up do you
 2 have the subject pressure cooker available to
 3 you today?

4 A. I don't think so. I think that that did
 5 not get returned to my office.

6 Q. Okay. By the way, where is your office
 7 located?

8 A. Berkeley, California.

9 Q. And where are you currently?

10 A. In my office.

11 Q. In Berkeley?

12 A. In Berkeley.

13 Q. Okay. No. 2 has exemplar pressure
 14 cookers examined by the witness during your
 15 review and referenced in your report. Do you
 16 have those exemplar pressure cookers
 17 available to you if needed?

18 A. The one I have available is the one
 19 that's the same model. Other exemplars that
 20 are referenced in the report I don't have
 21 readily available. They're -- they're
 22 stashed away somewhere where I can't get to
 23 them immediately.

24 Q. When did you -- when did you stash them?

13

1 A. Oh, probably, probably a while ago. I
 2 don't know. It would have been wherever my,
 3 my -- our office assistant would have put
 4 them away.

5 Q. Before or after you wrote your report?

6 A. Probably, you know, probably after. I
 7 would -- I would imagine after, but I
 8 don't -- I don't specifically recall when
 9 they were put away.

10 Q. Paragraph 4 is your entire, actually not
 11 your file, put Berkeley Engineering's entire
 12 file relating to this matter and relating to
 13 your examination of the subject pressure
 14 cooker. Has that been produced to your
 15 counsel for production to me?

16 A. Yes.

17 Q. Okay. And is there anything in your
 18 file that wasn't produced?

19 A. There were two documents that for
 20 whatever reason didn't get up in the share
 21 folder until yesterday. I was going through
 22 the file again yesterday and I recognized one
 23 document. I don't -- I have no idea why it
 24 wasn't there, and then there was another

14

1 document, the summary file that was on the
 2 share folder was an old version, so I put the
 3 latest version up there. I also sent copies
 4 of those to Mr. Kress yesterday so they could
 5 be distributed about. Everything is on
 6 there.

7 Q. Okay. I did receive two additional
 8 documents yesterday. We'll go through just
 9 for completeness sake what you sent to me
 10 including the two additions, but it was your
 11 intention to produce your entire file to
 12 Mr. Kress for production to me; is that fair?

13 A. That's fair.

14 Q. Okay. And have you produced all videos,
 15 video depiction test results, notes, et
 16 cetera, generated in connection with your
 17 examination of the Durham product?

18 A. Yeah, they were all part of my file.

19 Q. And have you produced all photographs,
 20 video depictions, measurements, notes, other
 21 items generated in connection with your
 22 examination of other products which you
 23 intend to rely on today?

24 A. Yes, those photos, I will probably refer

15

1 to a few photos in the report, and I think
 2 that's all there is for that.
 3 Q. Okay. Do you have any photographs,
 4 videos, test results or other items generated
 5 during the testing of a float valve in any
 6 pressure cooker?
 7 A. I mean, I've tested dozens if not more
 8 pressure cookers and I do not have all of my
 9 test data in my file for this case. Many of
 10 them are not pertinent to this case.
 11 Q. Are you relying on it for this case even
 12 though it hasn't been produced?
 13 A. No. I would say no. I don't think they
 14 have any bearing on this case.
 15 Q. Okay. How about No. 10, test results
 16 generally, have all the test results for any
 17 product on which you're basing your opinions
 18 in this matter been produced?
 19 A. Yeah, because I don't think any of those
 20 test results apply to this case, so I would
 21 say that they're not -- they don't apply to
 22 this case.
 23 Q. Okay. Have you produced all of the
 24 documents containing the facts or data

16

1 considered by you in forming your opinions in
 2 this case?
 3 A. Yeah, I believe those are all in the
 4 file.
 5 Q. Have you created anything to date that
 6 you'll be used -- that will be used at trial
 7 to illustrate your points or your opinions?
 8 A. No, I haven't created anything
 9 specifically for trial yet.
 10 Q. And have the documents -- well, first of
 11 all, I'll ask do you have documents that will
 12 accurately state the amount of compensation
 13 billed in this matter?
 14 A. My bookkeeper and Mr. Kress's office
 15 have all the invoices. I think that's what
 16 you're referring to. I don't have those in
 17 my file. I don't maintain those in my file.
 18 Q. All right. Do you know if those have
 19 been produced?
 20 A. That I don't know.
 21 Q. Can they be produced?
 22 A. Yeah. I don't think my bookkeeper is in
 23 the office at this moment, but I can
 24 certainly ask her to do that or Mr. Kress if

17

1 he has access to them I assume could do that
 2 as well.
 3 MR. KRESS: Yeah. Dennis, happy
 4 to supplement.
 5 MR. CALLAHAN: Thank you.
 6 BY MR. CALLAHAN:
 7 Q. I'm going to bring up another -- well,
 8 it's not really a document. It is a, the
 9 electronic folder of what was produced. On
 10 the file share that was sent to me there were
 11 one, two, three, four, five, six, seven
 12 folders and three separate documents.
 13 Does that sound accurate?
 14 A. I -- I see that what you're showing me
 15 now does not include the two documents I sent
 16 yesterday. And just to be clear, one of the
 17 two documents I sent yesterday is a newer
 18 version of the materials document that you're
 19 showing on the file, yeah, that you're
 20 showing right now.
 21 Q. Okay. There is a newer version of this
 22 materials summary?
 23 A. Yes.
 24 Q. Okay. And I'll acknowledge I did

18

1 receive that.
 2 A. Okay.
 3 Q. This is just from your file share that
 4 was produced I think last week.
 5 A. Yeah, that looks like it was a week or
 6 two ago or something like that.
 7 Q. Well, I think it's dated the 6th, so it
 8 probably was produced on the 6th.
 9 A. Okay. That sounds reasonable.
 10 Q. Which is nine days ago, last week.
 11 A. Okay.
 12 Q. And then there is a notes section. This
 13 particular document just has two notes.
 14 Ivery is the mother of Amber. [REDACTED]
 15 is the young son of Amber. That's the only
 16 thing that's in that document?
 17 A. Yes.
 18 Q. And then you produced another document.
 19 I'm going to stop share for a sec. Hold on,
 20 I have to find it. Oh, I don't have it
 21 electronically available. I'll have to dig
 22 that out during a break, but it looks like
 23 it's typewritten notes, a text file of
 24 typewritten notes of the heater examination;

19

1 is that fair?

2 A. Yes, I think that is fair.

3 Q. It looks like that.

4 A. Yes. I can't really read it, but I

5 think that is -- I think, you know, it's

6 fuzzy, but it looks like the right thing. I

7 think you're correct.

8 Q. Okay. I'll go find it and we can look

9 at it later, but that's, that's what I have.

10 I think we're talking about the same document

11 because that was the one that was sent to me

12 yesterday.

13 Going back to what we had, okay,

14 Folder 1, BEAR Administration --

15 A. Yes.

16 Q. -- this is just, this is basically the

17 retainer agreement; right?

18 A. That is, yeah, the retainer agreement.

19 I think there was an e-mail associated with

20 the agreement and then a signed version of

21 the agreement. I think that's what's in

22 there.

23 Q. Okay. And then the folder marked

24 "Evidence" contains what?

20

1 A. So those are documents generated and

2 photographs generated by my evidence manager

3 when the evidence is taken in. So you'll see

4 there are photographs of the pressure cooker.

5 There is a tag of the pressure cooker that we

6 put on the pressure cooker. It looks like

7 there is a shipping tag for shipping the

8 evidence to Mr. Matisse at FEA in Ohio, and I

9 think that's it. I think that's what's in

10 here. Oh, and a chain of custody as well.

11 Q. So this is a just a document of what was

12 in the box that you received essentially?

13 A. And it also documents that we sent the

14 evidence to somebody else.

15 Q. Therefore. And exemplars, what are

16 these?

17 A. These are exemplar pressure cookers. I

18 believe that they are all Instant Pots. Let

19 me just flip through. Yeah, we've got a Duo

20 Plus. We've got a Duo Plus and we've got a

21 Duo Plus. Yeah, so we've got three exemplars

22 that were taken in for this. I don't recall

23 which of those three I looked at in my review

24 for the depo, but that's, it documents the

21

1 three exemplars that we do have in our

2 possession here at BEAR somewhere.

3 Q. All right. You didn't test any of those

4 three exemplars in connection with the Durham

5 matter?

6 A. I don't think so, no.

7 Q. Nothing has been report -- nothing has

8 been disclosed about a test; right?

9 A. I believe that is correct, yes. I think

10 I visually looked at them, but I don't think,

11 you know, we did any pressure testing or

12 anything like that.

13 Q. There is a folder, "Documents Received."

14 What's in here?

15 A. Well, this one is just the depo change

16 notice that I received recently which was I

17 think the one you actually showed me. It's

18 showing the date and time for the depo.

19 Q. All right. There is a folder marked

20 "Inspection." What is this?

21 A. These are photographs that we took here

22 at BEAR showing the subject unit. I believe

23 there is one video in there as well, oh, and

24 it's showing the operation of the float.

22

1 That's all. So that's, I believe that's

2 what's in this folder. These are just

3 photo -- these are just, these are documents

4 that we generated during the inspection of

5 the pressure cooker.

6 Q. Okay. Is this all the photographs of

7 the inspection?

8 A. I believe that is correct, yes.

9 Q. Who conducted this inspection?

10 A. I believe that Mr. King was the one who

11 actually conducted the inspection. I believe

12 that it was Mr. King in this case.

13 Q. Did you attend the inspection with Mr.

14 King?

15 A. So, yeah, I don't recall. I know I

16 looked at the subject pressure cooker and I

17 reviewed what was done during the inspection.

18 I just don't recall if I was there for part

19 of the inspection or not. I've seen so many

20 of these that just, I can't -- I can't

21 isolate it. I don't know.

22 Q. When did you -- when did you examine the

23 actual unit involved?

24 A. I believe I would have looked at it

23

1 right around this same date back in April.
 2 Q. When you say "looked at," what do you
 3 mean?
 4 A. I mean visually inspected.
 5 Q. Did you take photographs of your
 6 inspection?
 7 A. No. I think all the photographs that we
 8 took are in this directory here.
 9 Q. Okay. How long was Mr. King's
 10 inspection of the unit?
 11 A. You know, I don't know. I don't recall.
 12 Q. A couple hours?
 13 A. Probably, that's typical.
 14 Q. And how long was your inspection?
 15 A. Um, well, I don't recall if I was
 16 present for the inspection that he was
 17 conducting, but I typically when I look at
 18 these it's only, initially it would only be
 19 for about an hour probably give or take.
 20 Q. Do you recall what you would do during
 21 your inspection?
 22 A. I typically would do a visual OEM
 23 inspection meaning look at all the parts,
 24 look at all of the physical damage if there

24

1 is any. I would place the parts together if
 2 there are parts that could be placed
 3 together, for example, place the lid on the
 4 base. Those are things that I would
 5 typically do.
 6 Q. Did you take any notes of your
 7 inspection?
 8 A. No, I don't think so.
 9 Q. Why not?
 10 A. There is no need. My note was going to
 11 be fully documented in the formal inspection,
 12 so I didn't feel any need to take notes at
 13 the time.
 14 Q. Why didn't you take the time to look at
 15 it?
 16 A. Because any time evidence comes in I
 17 like to take a look at it and see what we've
 18 got so that I can get, do sort of a
 19 preliminary mental assessment on it.
 20 Q. Did you look at this product before or
 21 after Mr. King?
 22 A. I don't recall the date that I looked at
 23 it.
 24 Q. There is a folder, "Materials." What's

25

1 this?
 2 A. These are materials that were provided
 3 to BEAR from Mr. Kress's office. They
 4 include three depositions, it looks like
 5 initial disclosures and requests, and then
 6 some discovery from, from Instant Pot.
 7 Q. Did you review this information as part
 8 of your evaluation?
 9 A. I did and my office did, meaning that I
 10 don't recall if it was Mingxi Zheng or Derek
 11 King who did the summaries, but I had them
 12 assist me in preparing the summaries, and
 13 then I reviewed the documents after the
 14 summaries were repaired -- prepared, so I
 15 could update those summaries and it helps me
 16 go through the documents a lot faster. I'm
 17 much more efficient when I do it that way.
 18 Q. And "Received 8/30," what is this?
 19 A. These are photographs and videos that I
 20 believe were taken by your expert at his
 21 office. They basically document the pressure
 22 cooker and I think they also document a
 23 couple of test s that he performed where I
 24 think he ran the, ran the cooker through a

26

1 cycle, relieved the pressure and then opened
 2 it. I think he did it, I recall him doing it
 3 both maybe two times. I'd have to look at
 4 the videos again, but I did review his videos
 5 as well.
 6 Q. In here is a copy of your report, I
 7 believe --
 8 A. Yes.
 9 Q. -- also provided.
 10 A. Yes, correct.
 11 Q. And I am going to find that document for
 12 completeness here. I have to find out where
 13 you guys went. There you are.
 14 Okay. Do you see that document?
 15 A. Oh, yes. This is the note document that
 16 you were holding up earlier I think.
 17 Q. Okay. And this was produced to me I
 18 believe on Tuesday. Monday or Tuesday, I
 19 can't remember now.
 20 A. Yeah, that sounds right.
 21 Q. And this is, this is all the notes that
 22 Mr. King took during his examination?
 23 A. Yes, correct.
 24 MR. CALLAHAN: I will mark the

27

1 inspection notes as Exhibit No. 3, the
2 document I just displayed.

3 (Exhibit Rondinone-3 was marked
4 for identification.)

5 MR. CALLAHAN: And I wasn't -- I
6 can't mark obviously the Windows Explorer
7 window that had the, you know, showing what
8 was in the file share, but...

9 BY MR. CALLAHAN:

10 Q. Sir, you are a mechanical engineer;
11 correct?

12 A. That's correct.

13 Q. You would not consider yourself a hazard
14 communications expert?

15 A. Only as it applies to engineering
16 design.

17 Q. You don't -- you don't draft warnings
18 for people, do you, or for entities?

19 A. I've drafted instructions and warnings
20 for a product that I've worked on the design
21 for, but I don't think I've ever been hired
22 to, to draft warnings for something that I
23 had nothing to do with.

24 Q. All right. There are people more

28

1 knowledgeable about warnings than you out
2 there professionally; correct?

3 A. Well, I'm sure there are.

4 Q. Okay. I mean, there are people that
5 specialize in hazards communication; right?

6 A. I have met people like that, yes, and
7 that's pretty much all they do.

8 Q. Okay. And that's not you?

9 A. That is correct.

10 Q. All right. You're not an expert in
11 psychology or human factors or human
12 behavior?

13 A. I would say that I am an expert in the
14 human factor side as it relates to operator
15 behavior and engineering design. I am
16 definitely not an expert in psychology.

17 Q. Okay. Are there experts that specialize
18 in human factors, people's interaction with a
19 machine or a product?

20 A. I'm sure that there are. I'm sure that
21 there are, although I don't know that I can
22 name any.

23 Q. What's the nature of your expertise with
24 respect to human factors?

29

1 A. Well, the human or operator interaction
2 with a device is inherent in the design,
3 meaning that the designer needs to understand
4 the way the operator will interact with the
5 device, and that part of it is part of
6 engineering design. You know, what's going
7 through people's minds as they're operating
8 things and the psychology of it is not. I
9 can't address that.

10 Q. All right. Do you have any expertise in
11 conducting consumer surveys of consumer
12 experience with products?

13 A. Oh, you know, over the years I have
14 conducted -- well, I've participated in some
15 surveys over the years, but it's been a long
16 while since I've done anything like that
17 personally. That would have been like
18 decades ago probably.

19 Q. All right. Would you consider yourself
20 an expert in conducting consumer surveys?

21 A. I guess I don't know. I never really
22 thought about that. I don't know.

23 Q. All right. Would you consider yourself
24 an expert in judging consumer expectations of

30

1 a product?

2 A. Yeah. As it relates to the engineering
3 design, yes, I do.

4 Q. Same way -- in the same manner you told
5 us before?

6 A. Correct.

7 Q. All right. Your report does not contain
8 any opinions or conclusions regarding
9 warnings; correct?

10 A. No, I don't think I have any opinions in
11 this case specific to the warnings.

12 Q. You're not a physician?

13 A. I am not a medical doctor.

14 Q. And you've never conducted a study of
15 burn injuries?

16 A. Well, no, that's probably not true. Not
17 specific for this case, but in the past I
18 have done work and analysis on burn injuries,
19 but it's -- it had more to do with the
20 engineering side of it, for example, what
21 temperatures and exposures would lead to
22 injury, meaning I've done surveys of
23 engineering and medical literature that refer
24 to that. So I'm not a medical doctor. I

31

1 can't tell you what's going on with the skin
 2 and why it burns and that sort of thing, but
 3 I definitely have reviewed what it takes for
 4 typical burn injuries, but not specifically
 5 for this case. I didn't specifically do that
 6 for this case.

7 Q. When you say what's -- I can't remember
 8 how you described it. Are you referring to
 9 studies of like time temperature exposure
 10 related to burns?

11 A. Yes, yes, yes.

12 Q. Okay. So X number of minutes at 140
 13 degrees can cause damage or a lesser number
 14 of 150 degrees might cause damage, that sort
 15 of thing?

16 A. Yeah. And I would also include that in
 17 addition to time and temperature, the
 18 material contact, so, for example, if it was
 19 with air or if it's with water contact will
 20 give very different results because of their
 21 thermal conductivity and heat capacity. So
 22 it would include all of those little bits and
 23 pieces, but to me that's more of an
 24 engineering approach as opposed to a medical

32

1 approach. It didn't talk about what exactly
 2 happens to the skin or the cells or anything
 3 like that.

4 Q. Okay. Do you have any special expertise
 5 in liquid dispersion?

6 A. As it relates to the physics involved
 7 for the motion of the liquids, then yes.

8 Q. Describe for me, please.

9 A. Sure. So, so, for example, with a
 10 pressure cooker, if the pressure cooker lid
 11 is open while the unit is under pressure, the
 12 liquid would be ejected either vertically or
 13 horizontally depending upon the way that the
 14 lid is being held at the time and the way the
 15 lid separates from the cooker.

16 The motion of that liquid to me
 17 falls into what I think you're asking about,
 18 and the physics that dictates the motion of
 19 the liquid I think also falls into what
 20 you're talking about, at least that's my
 21 understanding of your question.

22 Q. Okay. Any other expertise?

23 A. Outside of the physics, I think that
 24 would cover it.

33

1 Q. All right. Does water or liquid
 2 behave -- I mean, the liquid expelled from a
 3 pressure cooker or any other, from a hose or
 4 whatever follows the rules of Newtonian
 5 physics; right?

6 A. Yeah, I think that's fair.

7 Q. Okay. If it's going to be, I mean, if
 8 it's going to be move from point A to point
 9 B, a force has to be exerted upon it;
 10 correct?

11 A. Yes, a force has -- a force has to
 12 impart an acceleration which will impart a
 13 velocity which will then combine with, you
 14 know, gravity or any other external forces
 15 will dictate the motion of the liquid.

16 Q. Okay. And that's the nature of your
 17 expertise?

18 A. Yeah, I think that's fair.

19 Q. Okay. Have you ever been employed by a
 20 product manufacturer?

21 A. We have been employed by product
 22 manufacturers, yes.

23 Q. That's not my question. My question is
 24 you personally, have you ever been employed

34

1 by a product manufacturer?

2 A. Only through my work at BEAR, not as an
 3 employee directly with that product
 4 manufacturer.

5 Q. You started with BEAR actually during
 6 school; correct?

7 A. I started with BEAR, yeah, just -- when
 8 was that? It was probably just before my
 9 Bachelor's.

10 Q. Before achieving your Bachelor's degree,
 11 not starting it?

12 A. Oh, yeah, correct, just before achieving
 13 my Bachelor's. I already -- I was already a
 14 student at the time.

15 Q. Got it. And you've been with BEAR
 16 since, ever since I should have said?

17 A. Yes, that's correct.

18 Q. All right. You said BEAR has been
 19 engaged by product manufacturers. By whom?

20 A. Oh, that's a pretty broad swath. The
 21 ones that I've worked on that I'm familiar
 22 with would include like power companies and
 23 refineries that manufacture their own
 24 components, suppliers for those, for those

35

1 types of industries. Oh, I've worked
2 directly with biomedical device
3 manufacturers. I've worked directly with OEM
4 manufacturers for automobile production. I
5 worked directly -- I guess once I worked with
6 a guy who was going to produce a climbing
7 wall. I -- there is -- I'm sure there are
8 others, too. I mean, those are the ones that
9 come to mind.

10 Q. Your, in your expert disclosure a CV was
11 attached. It lists a whole number of
12 publications. Would you agree that none of
13 them relate to pressure cookers specifically?

14 A. I think -- well, I think in that list
15 that might be true. I mean, I haven't looked
16 at that list in years to be honest with you.
17 I don't think it's been updated in a long
18 time.

19 Q. So is that a yes, you haven't written an
20 article, published an article related to a
21 pressure cooker outside of litigation?

22 A. I think that's fair. Yes, I think
23 that's fair.

24 Q. Okay. Are you aware of any generally

36

1 accepted literature relating to pressure
2 cooker design?

3 A. Outside of like the UL standards and the
4 industry standards I would say no, those are
5 the ones that I'm aware of.

6 Q. What UL standards?

7 A. 1026 and 136 are the ones that come to
8 mind.

9 Q. What's the scope of UL Standard 1026?

10 A. 1026 I believe is the electronic
11 pressure cooker standard, and 136 I believe
12 is the stovetop standard, but 1026 had
13 language that indicates that parts of 136
14 should be applied to the electronic pressure
15 cookers, specifically the lid interlock
16 mechanism. So those are the two together I'd
17 say that would make up those documents.

18 Q. If a product goes through the UL
19 certification process, does that indicate the
20 product is not defective?

21 A. No, I think that no. I would say that
22 it just means that whoever tested it to
23 whatever test, testings they put it through,
24 it passed those tests.

37

1 Q. Okay. If a product does not go through
2 the UL certification process, does that mean
3 it is defective?

4 A. Not necessarily. I mean, it depends on
5 the product and how it's designed.

6 Q. Can you think of any other design
7 standards other than the UL standards that
8 you say apply?

9 A. I can't think of any right now.

10 Q. Okay. I almost pressed leave.

11 A. Good thing you didn't.

12 Q. Going back to your report as Exhibit 1.
13 Skipping ahead here, okay. Here is your
14 resume, your curriculum vitae.

15 A. Okay.

16 Q. And I want to skip ahead to your
17 testimony list.

18 A. Okay.

19 Q. The testimony list that I was provided
20 of the most recent testimony is November 19th
21 of 2019.

22 A. I see that.

23 Q. I know there has been COVID, but you've
24 testified since then, have you not?

38

1 A. I certainly have. I'll have to talk to
2 my office to see what the most updated
3 version is. I know that my office -- yeah, I
4 guess I don't know how often they update it,
5 but I assume they update it about once a
6 year. I know with COVID -- I know in the
7 early part of 2020 and even into the early
8 part of 2021 I had very, very few
9 depositions. Sort of after COVID hit things
10 sort of hit a -- they hit the brakes on that.
11 It wasn't until probably about a year ago
12 that it started up again, but I'd have to
13 talk to my office to see what the most recent
14 version of this, of this list is, because I
15 know I have definitely had depositions since
16 November 2019.

17 Q. In calendar year 2022 how many
18 depositions have you given, do you know?

19 A. I don't know specifically, but I would
20 estimate maybe five or ten. I'm not sure,
21 something in the -- maybe a few more than
22 ten, but it's not tremendously more than
23 that.

24 Q. How many of those depositions related to

39

1 pressure cookers?

2 A. Oh, probably I would say at least five

3 have been pressure cookers. I don't have a

4 specific number, but it's been a fair number.

5 Q. Just in 2022 I'm asking.

6 A. Yeah, correct.

7 Q. Okay. Do you remember the case names?

8 A. No, I don't.

9 Q. Do you remember the manufacturers?

10 A. I think there were Maxi-Matic, Tristar,

11 maybe, maybe Bella. I'm -- I'm not sure

12 about Bella. I think there might have been a

13 Bella or two. I don't think there have been

14 any Instant Pots.

15 Q. When you testify at a deposition, do you

16 consider yourself in the expert in the topic

17 discussed at the deposition?

18 A. I do.

19 Q. Okay. So just look at the list you have

20 here. November 19, 2019, you testified

21 regarding a motorcycle gas tank.

22 A. Yes, that's correct. That was the

23 physics and failure of the material of the

24 gas tank.

40

1 Q. All right. So you consider yourself an

2 expert in that field?

3 A. Certainly.

4 Q. And the next one down, Sanchez, what was

5 that case about?

6 A. I don't recall what that one is about.

7 Q. Ryan Rainwater was a propane heater. Do

8 you consider yourself in that product as

9 well?

10 A. Yes. Yes, because that's also just

11 straight up mechanical engineering.

12 Q. The next one, fridge water line leak, do

13 you consider yourself an expert in fridge

14 water lines?

15 A. Yes. That's just mechanical

16 engineering.

17 Q. This Becerra versus Illinois Tool, what

18 was that case about?

19 A. I don't recall.

20 Q. The Hawkins case, gasoline container

21 explosion, again, you're an expert in that

22 field?

23 A. Yes, that was also mechanical

24 engineering.

41

1 Q. The next one, concrete hose, you were an

2 expert in that?

3 A. Well, I don't specifically recall that

4 case, but if it was a concrete hose that

5 would also be mechanical engineering. I

6 think everything here is going to be

7 mechanical engineering.

8 Q. How many matters -- you haven't

9 testified in every case; right?

10 A. Oh, no. No, it's probably just a small

11 percentage.

12 Q. What's the percentage of cases you've

13 testified versus the percentage of cases you

14 have evaluated?

15 A. I have no idea. I don't keep that

16 statistic, but if I had to estimate maybe one

17 in ten, maybe.

18 Q. So for every deposition here there is

19 ten other -- there is nine other cases where

20 you did an evaluation, wrote a report, but

21 did not testify?

22 A. Well, that's not what I said. Some of

23 them don't require reports at all. Some of

24 them are just sort of preliminary work and

42

1 doesn't get any further.

2 Q. Okay.

3 A. And like I said that ten is an estimate.

4 So we can't say one is a depo and nine are

5 not because that's -- that kind of specific

6 number I'm not giving you. I'm just --

7 that's a big, round number. That's an

8 estimate.

9 Q. All right. But using your estimate, for

10 every case that walks in the door

11 approximately one time you testify and nine

12 other times you don't testify, whatever

13 happens in that case?

14 A. That's possible. Yeah, that's possible.

15 Q. Okay. And I'm not making that number

16 up, I'm using your estimate, estimate to do

17 that math; right?

18 A. Oh, yes. Yeah, as long as you're aware

19 that it's an estimate then I think that's

20 fair.

21 Q. Okay. And is that true with pressure

22 cookers?

23 A. Um, maybe. I guess I don't have a

24 specific on that either, but it's probably at

43

1 least in that ballpark.

2 Q. Okay. How many pressure cooker matters
3 have you worked on, whether or not they ended
4 up in a deposition or testimony?

5 A. Yeah, I would estimate, oh, 100 plus or
6 minus 25 or something I guess. That's a
7 very, that's a very rough estimate, but it's
8 in that ballpark.

9 Q. And this is you personally?

10 A. Yeah, I personally looked at those
11 pressure cookers.

12 Q. Anybody else that looks at pressure
13 cookers at Berkeley Engineering?

14 A. Well, Mr. King works on a lot of the
15 pressure cookers with me. We work on the
16 cases together. He's probably worked on some
17 without me, but I don't really know since I
18 don't track all of his work. Maybe
19 Dr. Stevick has worked on some that I don't
20 know about. I guess -- I guess I don't know.
21 It's possible. I wouldn't rule it out.

22 Q. Okay. When you work on pressure cooker
23 matters, is it always for the plaintiff?

24 A. I think on pressure cookers that's true.

44

1 Q. Otherwise in your other work is it
2 mostly for plaintiffs or --

3 A. Well, I don't keep a specific track of
4 that and I know it does change like week to
5 week and month to month. So there are some
6 weeks that it's majority plaintiff work and
7 there are some weeks where it's majority
8 defense work, but I would say on average it's
9 majority plaintiff meaning over half the work
10 is plaintiff on average, but I know that
11 there are many weeks where that is not true.

12 Q. All right. You've had cases -- you've
13 had pressure cooker cases against Tristar you
14 said?

15 A. Yes.

16 Q. Maxi-Matic?

17 A. Yes.

18 Q. Cook Essentials?

19 A. Cook Essentials, that does sound
20 familiar. I guess I don't -- I don't
21 specifically recall, but that name does sound
22 familiar. I bet there have been.

23 Q. All right. Sunbeam?

24 A. Yes.

45

1 Q. Farberware?

2 A. Farberware, yeah, that does sound
3 familiar. I bet a couple of those have come
4 across.

5 Q. Instant Brands?

6 A. Yes.

7 Q. Cuisinart?

8 A. I think so. I think so.

9 Q. All right. And how about Fagor,
10 F-A-G-O-R?

11 A. Oh, you know what, that one sounds
12 familiar, too. I bet I've seen -- I bet I've
13 seen one or two of those.

14 Q. Gourmia, G-O-U-R-M-I-A?

15 A. Gourmia, Gourmia also sounds familiar.
16 I guess I -- I don't have a specific
17 recollection of theirs being a pressure
18 cooker, but I think. I want to say I think
19 so.

20 Q. How about Insignia?

21 A. I don't know.

22 Q. Presto?

23 A. That one sounds familiar. I don't know.
24 Did Presto do the Wolfgang Puck? I guess I'm

46

1 not sure about Presto. I'm not sure.

2 Q. All right. How about Breville for
3 Williams Sonoma?

4 A. That one does not sound familiar, so I
5 guess I'm not sure about that one.

6 Q. All right. Royal Prestige?

7 A. I think I have seen Royal Prestige, but
8 I'm not sure if those were electronic or
9 stovetop. I guess I don't -- I don't recall.
10 I'm not sure. I'd say I'm not sure for that
11 one, but it does sound familiar.

12 Q. Ninja?

13 A. Yes, I have seen a Ninja maybe once.

14 Q. T-fal?

15 A. Say that again.

16 Q. T-fal?

17 A. Can you spell it? No, T-fal, T-f-a-l?

18 Q. Yes.

19 A. You know, I'm not sure about that one.

20 Q. Okay. Admiral?

21 A. That one sounds familiar, but I'm going
22 to say I'm not sure.

23 Q. How about Philippe Richard?

24 A. Yes, I have seen Philippe Richard, but

47

1 those have might have also been stovetops as
 2 well if I remember right.
 3 Q. All right. You make a good point. I'm
 4 going to go back and ask you that question
 5 when we're done with this list.
 6 How about NuWave pressure cookers?
 7 A. That sounds -- that does sound familiar,
 8 but I don't have a specific recollection of
 9 seeing one of those, but I bet I have.
 10 Q. All right. Cosori?
 11 A. Yes.
 12 Q. Wolfgang Puck?
 13 A. Yes.
 14 Q. Any others that you can think of that I
 15 didn't list?
 16 A. Well, for some reason the name Bella is
 17 coming to mind, but I don't recall what the
 18 manufacturer's name is. That might just be a
 19 brand.
 20 Q. Okay. Any others?
 21 A. Not that I can think of. There may be,
 22 but I can't think of any.
 23 Q. In any of these pressure cooker cases,
 24 did you write reports saying that the product

48

1 was not defective?
 2 A. That I don't know. I'm guessing
 3 probably not, because I -- because I imagine
 4 that if I told the client it wasn't defective
 5 they wouldn't ask for a report.
 6 Q. Did you ever find one of these products
 7 to be not defective?
 8 A. You know, that I'm not sure. It is
 9 possible. I guess I don't have a specific
 10 recollection of that, but I do recall that
 11 there were some where we called the client
 12 and said there is just nothing here, but I
 13 can't tell you specifically what that would
 14 be.
 15 Q. You can't tell me that manufacturer?
 16 A. No.
 17 Q. Did you ever call the client and tell
 18 them that the Instant Brand's pressure cooker
 19 was not defective?
 20 A. That I don't know. I don't recall doing
 21 that, but I wouldn't rule it out.
 22 Q. In the course of your work evaluating
 23 these products for plaintiffs, you found that
 24 one or more of these products was defective

49

1 because it lacked an appropriate locking
 2 mechanism; is that fair?
 3 A. That's true in many of the cases, yes.
 4 Q. Okay. Is that a lack of a locking
 5 mechanism or an inadequate locking mechanism?
 6 A. No, I think they all have locking
 7 mechanisms that they believe are locking
 8 mechanisms, but in many cases the mechanisms
 9 are not sufficient locks meaning you can just
 10 open them by hand.
 11 Q. And you don't express that opinion in
 12 this Durham matter, do you?
 13 A. That's true.
 14 Q. Have you found a product, a pressure
 15 cooker to be defective because the float
 16 valve is too low and not visible to the user?
 17 A. Yes, I do.
 18 Q. Have you found a product, a pressure
 19 cooker to be defective because the float
 20 valve is too high and subject to being
 21 accidentally depressed and unlocked by the
 22 user?
 23 A. You know, I don't specifically recall
 24 that. I guess that could have -- that could

50

1 be, but I don't have a specific recollection
 2 of that, but I guess I wouldn't rule it out.
 3 Q. Have you found a pressure cooker
 4 defective because it gets pressurized when
 5 not fully close -- closed? Sorry.
 6 A. Yes.
 7 Q. Have you found any of these pressure
 8 cookers to be defective because they get
 9 pressurized when not fully locked?
 10 A. Yes.
 11 Q. Have you found any of these pressure
 12 cookers to be defective because they lack a
 13 magnetic or mechanical lid sensor?
 14 A. Yes.
 15 Q. Have you found any of these products to
 16 be defective because they're susceptible to
 17 valve clogging?
 18 A. Yes.
 19 Q. Have you found any of these products to
 20 be defective because it lacked an antilock
 21 shield to protect against or reduce the risk
 22 of valve clogging?
 23 A. Yes, but I would expand that to say
 24 either a shield or like a full baffle which

51

1 is common on some designs.
 2 Q. Have you ever found a product, a
 3 pressure cooker defective because the valves
 4 weren't adequately accessible to the user?
 5 A. Acceptable? I'm sorry.
 6 Q. Accessible.
 7 A. Access --
 8 Q. They couldn't be reached by the user for
 9 cleaning and maintenance.
 10 A. That I don't recall.
 11 Q. All right. Have you found any other
 12 defects in pressure cookers?
 13 A. Well, there are some pressure cookers
 14 that open, that close counterclockwise and
 15 open clockwise, which is the opposite of
 16 every, almost every other consumer product in
 17 the world.
 18 Q. And you consider that a defect?
 19 A. Yeah, because that can easily lead to
 20 operator confusion. That's not the case
 21 here. I believe the Instant Pots closed in
 22 my opinion the correct way.
 23 Q. All right. Any other defects you found
 24 over the course of your work?

52

1 A. Some of the interlock mechanisms are
 2 defective because they can bend over time,
 3 meaning they're weak, meaning they may start
 4 stronger but then after being used may become
 5 weaker. I would say that some of them have
 6 interlock mechanisms that, that can be
 7 defeated if the lid assembly becomes loose.
 8 That's mostly for stovetops. That's not for
 9 electronics in general. I'd say that's
 10 probably it. I'd say otherwise you've listed
 11 them.
 12 Q. Okay. Do you think pressure cookers
 13 should be taken off the market?
 14 A. I think that -- I think that many of
 15 them should, yeah.
 16 Q. Which brands do you believe should be
 17 taken off the market?
 18 A. Well, I would say that any of the brands
 19 that don't have the proper locking mechanism
 20 or the proper lid detection mechanism or the
 21 proper I would say valve protection or
 22 anti-clog protection mechanism, but those are
 23 the -- those are the key ones that come to
 24 mind. Most of the pressure cookers keep in

53

1 mind have many multiple defects, not just
 2 one.
 3 Q. Can a pressure cooker be designed
 4 safely?
 5 A. I'm sure that it could, yeah.
 6 Q. What's the safest pressure cooker out
 7 there? Do you have an opinion on that?
 8 A. I guess I don't -- I guess I don't know.
 9 I guess I don't know.
 10 Q. Have you ever concluded in your work
 11 that user error and not a defect, not a
 12 defect was the cause of the user's injuries?
 13 A. I think that I have concluded that the
 14 user behavior certainly contributed, meaning
 15 the user would open it under pressure, while
 16 it was under pressure, meaning that the user
 17 behavior contributed to the event and without
 18 that behavior the event wouldn't occur.
 19 I know that I've had that opinion
 20 many times, but it's my opinion that if the
 21 design allows the user to open it, then the
 22 design is defective. The design should not,
 23 should prevent that from occurring.
 24 MR. KRESS: Dennis, do you mind if

54

1 we take a quick five-minute break?
 2 MR. CALLAHAN: Before I forget can
 3 I ask my stovetop electronic questions and
 4 then just kind of close this loop?
 5 MR. KRESS: 110 percent. Go for
 6 it.
 7 MR. CALLAHAN: All right. Thanks.
 8 Actually two questions, Adam. Sorry, I lied
 9 to you.
 10 MR. KRESS: No problem.
 11 BY MR. CALLAHAN:
 12 Q. As far as user error, is that something
 13 you consider in every case?
 14 A. That's always considered. The user
 15 behavior is always considered.
 16 Q. All right. And in every case where you
 17 found a defect, you concluded that user error
 18 wasn't, wasn't the cause of the accident?
 19 A. I would say that user behavior
 20 contributed in many of the cases, but there
 21 were some cases where it didn't even come in
 22 at all.
 23 Q. All right. You mentioned stovetop and
 24 electronic pressure cookers. They are

55

1 fundamentally different devices; correct?

2 A. Well, they're different in the method by

3 which heat is applied to the cooker and the

4 electronic ones usually have electronics in

5 addition to the other mechanisms that are

6 present on the stovetop. So they're

7 definitely different, but I think the

8 fundamentals are the same, like they both

9 require heat to generate pressure which

10 causes food to cook at a higher temperature.

11 So from the physics fundamentals they're the

12 same. From the design standpoint I think

13 there are a lot of differences.

14 Q. Okay. When we were talking about

15 pressure cookers before and the number of

16 pressure cooker cases you've evaluated, how

17 many were electronic and how many were

18 stovetop?

19 A. I would say that the vast majority are

20 electronic. I don't have a specific number

21 because we don't keep track of that, but I

22 know the vast majority were electronic.

23 Q. Could you put a rough percentage on

24 that?

56

1 A. No. I mean --

2 Q. Something greater than 51-49, right?

3 A. It's definitely greater than 51-49. I

4 would say it's probably --

5 Q. 90-10?

6 A. Yeah, I would say maybe I'd say between

7 70 and 90 percent electronic, somewhere in

8 that range, you know. I don't have a

9 specific number. It's really -- that's very

10 hard, but that's a very rough estimate, but

11 that's probably the best I can do.

12 MR. CALLAHAN: All right. Thank

13 you. We can take a break.

14 THE VIDEOGRAPHER: Off the record.

15 The time is 2:02.

16 (Recess; 2:02 p.m.)

17 - - -

18 (Resumed; 2:08 p.m.)

19 THE VIDEOGRAPHER: Back on the

20 record, 2:08.

21 BY MR. CALLAHAN:

22 Q. Are you familiar with the scientific

23 method, sir?

24 A. Yes.

57

1 Q. In your PhD work you applied the

2 scientific method; correct?

3 A. That's correct.

4 Q. And when you wrote your thesis you had

5 to support your results and your hypothesis

6 with facts and experimental results; right?

7 A. I did.

8 Q. You had to justify your conclusions to

9 the scientific community, community

10 represented by your PhD committee?

11 A. Correct.

12 Q. You generally -- well, essentially you

13 had to convince that committee that your

14 conclusions in your thesis were worthy of

15 general acceptance in the scientific

16 community?

17 A. I think that's fair.

18 Q. And if you hadn't presented facts and

19 data to support your conclusions, the

20 committee would have rejected your thesis?

21 A. I guess I don't know. I don't know. I

22 would -- maybe.

23 Q. Wasn't the whole point the review

24 process?

58

1 A. The review process I think was to ensure

2 that, that the work was done in a competent

3 fashion and was presented in a competent

4 fashion, but that doesn't necessarily mean

5 that the whole engineering community would

6 accept it as gospel. I don't -- I don't know

7 all that's true.

8 Q. Fair. But if you had just written I

9 think X is true, trust me, you would not have

10 your PhD now; right?

11 A. That's probably true.

12 Q. Okay. You had to present facts and data

13 to support your conclusions; right?

14 A. I believe that's true.

15 Q. All right. And if you hadn't, the

16 committee would be correct in rejecting your

17 hypothesis as unsupported; right?

18 A. If they felt that additional work needed

19 to be done, they would have told me.

20 Q. Okay. The scientific method generally

21 is you collect the data; right?

22 A. Well, usually the --

23 Q. Step one?

24 A. -- scientific method -- no. Usually the

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1 first step is to evaluate your hypothesis
2 meaning what do you think is happening.

3 Q. Okay.

4 A. Then the second step would be to
5 evaluate that, and then the third step would
6 be to draw conclusions.

7 Q. Okay. Your first step is create the
8 hypothesis?

9 A. Correct. You want to evaluate what you
10 believe is occurring.

11 Q. All right. Until the hypothesis is
12 proven it's just a hypothesis; right?

13 A. Well, I mean at that point it's
14 something that, that could happen, but it's
15 not something that you've not necessarily
16 demonstrated physically.

17 Q. All right. It could happen, it could
18 not happen until you demonstrate that it's
19 true; right?

20 A. Well, no. You can use physics to
21 demonstrate that something could happen. I
22 think if you want to do -- if you wanted to
23 evaluate statistically how often it happens
24 and what it takes to happen, then you would

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1 need to do more work if you wanted to fill in
2 the statistics.

3 Q. All right. It sounds like what you're
4 describing is just proof of concept, like I
5 think this could happen. That's your
6 hypothesis; right?

7 A. Yeah, but if it's based upon physics and
8 your experience then it's not just, well, I'm
9 going to make up something and it's random,
10 here it is. It's something that's based on
11 physics and experience so that you can say,
12 yeah, I believe that this is -- this is how
13 it's going to happen, and you do have physics
14 and experience to support it, but you can't
15 say statistically how often or when unless
16 you want to support that statistics with
17 testing.

18 Q. All right. And you also can't even
19 determine whether it will happen until you do
20 some further work; right? I mean, you just
21 can't rely on one experiment?

22 A. No, you can rely on physics, right. The
23 physics will tell you. So, for example,
24 let's take the pressure cooker for an

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1 example. It's my opinion in this case that
2 the most likely scenario is clogging of the
3 float valve which allows pressure to build
4 without the float valve sealing and engaging
5 the interlock.

6 We know that certain foods will
7 perform the clogging mechanism, right. I've
8 tested other pressure cookers where we've
9 been able to clog orifices with foods that
10 are fibrous or foods that are fatty or foods
11 that combine with each other to make sort of
12 a gummy substance stuff, you know, something
13 that clogs.

14 I know that from experience that
15 it's, that it's possible to clog these
16 valves. I also know from experience that the
17 lid can be opened when they're under pressure
18 if the interlock is not interlocking.

19 You can combine those experiences
20 along with the physics to then say that the
21 most likely scenario is that a clogging while
22 the interlock is not interlocking can allow
23 for an opening under pressure which is
24 described in this case. And in my opinion,

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1 that does follow the scientific method and
2 that is relying upon physics and experience
3 to do it.

4 Now, am I saying how often it
5 happens or what the statistics are about it,
6 no, I'm not, because if I wanted to do
7 that -- like let's say, for example, I wanted
8 to say that it's impossible for this to
9 happen. Well, then you'd actually have to do
10 a statistically complete study in order to
11 say that, right, because one in a hundred is
12 not the same as it's not possible.

13 And so I'm not providing
14 statistics, and I don't know if any of the
15 other experts in this case are, but if you
16 wanted to say that it was impossible or that
17 it's only possible at this frequency, then
18 you would need to do the statistical studies
19 to support that, but if you just want to say
20 that it is possible, in my opinion you are
21 following the scientific method when you rely
22 on physics and experience to do so.

23 Q. Okay. So are you characterizing your
24 opinion and the application of the scientific

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1 method by stating your opinion, this is
2 possible, in some statistical whatever, it's
3 possible? That's all you're saying; right?

4 A. Well, in this case I would say that it's
5 possible and it's also what's described by
6 the witnesses, which means that it's the
7 scenario that best matches the, the
8 description of the witnesses.

9 Q. All right. And in your application of
10 the scientific method in this case, it's your
11 opinion that testing isn't necessary?

12 A. Not if -- no. It is my opinion that
13 testing isn't necessary, however, if someone
14 were to rely on testing to prove the
15 opposite, to prove that it's not possible,
16 then they would have to perform a
17 statistically complete study, you know, not
18 two or four or ten tests. That's nowhere
19 near statistically complete.

20 So if you wanted to say that it
21 was impossible, then you'd have to do a
22 statistically complete study. If you want to
23 say that it is possible, all you have to
24 demonstrate is that it's physically possible,

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1 meets the description and meets your
2 experience, because you're not saying how
3 often it's possible. It could be one in a
4 hundred. It could be -- could be one in a
5 thousand.

6 Q. It could be one in a hundred million,
7 couldn't it?

8 A. I guess I wouldn't rule that out. That
9 to me seems unlikely, but simply because, you
10 know, I've probably seen half a dozen or a
11 dozen Instant Pot cases where people describe
12 events very much like they're described here.
13 And I -- it's not -- I'm not aware that
14 Instant Pots have sold tens or hundreds of
15 millions of units. So I guess if you want to
16 give me a hypothetical for those kinds of
17 really high numbers, you'd have to -- you'd
18 have to demonstrate that to me.

19 Q. How many Instant Pot cases have you
20 evaluated?

21 A. I would estimate, I'm going to ballpark
22 it around 10-ish, but I'm not sure. It could
23 be more.

24 Q. How many times have you written a report

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1 stating that the float valve clogged?

2 A. For Instant Pot?

3 Q. Yeah.

4 A. You know, I don't know. I don't know.

5 Q. You can't tell me any other case here
6 where that, where you wrote that report?

7 A. Yeah, I don't recall.

8 Q. So in your experience you can't offer
9 any other Instant Pot case where the float
10 valve clogged causing this type of incident?

11 A. No. I just don't know that I've ever
12 written any reports for any of those other
13 cases.

14 Q. And again my question was you can't
15 point to any case. You have no other
16 incident to point to to support your
17 conclusion here, do you?

18 A. I guess not specifically. I mean, I
19 recall that there was a California lawyer who
20 had an Instant Pot case that came to us,
21 maybe two, but the description of those
22 events is consistent with the clogging event.
23 I don't remember the name of that attorney,
24 and I -- and I'm sure there have been other.

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1 I just don't remember all the cases
2 specifically, so I can't give you a specific
3 name.

4 Q. But you haven't written a report stating
5 that. That is -- that is certain, right?

6 A. Well, that's not certain. I just don't
7 recall writing a report for an Instant Pot
8 where that was the case. I just don't
9 recall.

10 Q. All right. So the way you're applying
11 the scientific method here, do you believe
12 that's a generally accepted application?

13 A. As long as you recognize that you're not
14 going to be able to give a statistically
15 complete answer, then yes.

16 Q. All right. Is your -- and you can't
17 offer any statistics? You're not doing that;
18 right?

19 A. I am not doing that, correct.

20 Q. Okay. In your -- well, let me ask it
21 this way. In your review of this case did
22 you analyze the information fairly?

23 A. I believe I did, yes.

24 Q. And would you agree that -- well, and

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1 the information in this case is essentially
 2 data to a scientist; right? All the
 3 information is the data; is that fair?
 4 A. Yeah, I think you could call it that.
 5 Q. Okay. So the data can come from an
 6 examination of the -- well, your associate's
 7 physical examination of the unit; right?
 8 A. And my physical examination of it as
 9 well.
 10 Q. Okay. And one test you conducted on the
 11 unit; correct?
 12 A. Um, yeah, I would include that, yeah.
 13 Q. All right. And the data would also be
 14 the testimony of the witnesses; correct?
 15 A. That's true.
 16 Q. Any other data sources that you can
 17 consider here?
 18 A. Well, I usually consider the -- well, I
 19 have -- in this case, for example, I have
 20 videos and photographs to consider from the
 21 other expert.
 22 Q. Okay.
 23 A. From Mr., I think it's Mr. or Dr.
 24 Matisse. I don't recall. I don't want to

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1 mess up, mess that up, so I would also
 2 include that.
 3 I guess I would include the
 4 documents that were provided to me in the
 5 case, not just the depositions, but also
 6 whatever information was available through
 7 that documentation.
 8 Q. All right. Anything else?
 9 A. No, I think that's it.
 10 Q. Applying the scientific method, what do
 11 you do if the data doesn't agree or if there
 12 is conflicts in the data?
 13 A. You evaluate it in its entirety and you
 14 look for what is consistent, what is the most
 15 consistent scenario or solution that applies,
 16 because it's quite common for witnesses to,
 17 you know, misremember things or not have
 18 specifics in terms of time, size, distance.
 19 You know, those things are typically not well
 20 remembered based on my experience.
 21 Q. You don't have any special expertise in
 22 judging what a witness can or cannot
 23 remember, do you?
 24 A. Not as a psychologist, no, but I mean

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1 I've seen testimony from probably thousands
 2 of witnesses over the years, probably many
 3 thousands, and it's not uncommon in my
 4 experience for witnesses to not be 100
 5 percent accurate in their recollections. I
 6 mean, that's almost impossible I think in my
 7 opinion.
 8 Q. But that's true with anybody; right? I
 9 mean, you talk to somebody on the street
 10 corner about what happened on Friday; right?
 11 A. Oh, no, I one hundred percent agree with
 12 you, yeah.
 13 Q. All right. Is your expertise any
 14 different than anybody else on the street?
 15 A. In terms of that, like in terms of that
 16 in psychology, no, it wouldn't be any
 17 different. I'm not a psychologist.
 18 Q. Okay. Applying the scientific method,
 19 does it sometimes happen you just don't have
 20 a solution because of a lack of data?
 21 A. Yeah, I guess that could be possible.
 22 Yeah.
 23 Q. Sometimes conflicting data would lead to
 24 the inability to draw a conclusion?

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1 A. It could.
 2 Q. And applying -- and analyzing the
 3 information fairly in this case, do you think
 4 you can lead to a conclusion about what
 5 occurred?
 6 A. Yeah, I -- yeah, I do believe so, and I
 7 believe that I've already stated what I think
 8 the most likely scenario is.
 9 Q. All right.
 10 Turning back to your report. We
 11 marked it as Exhibit 1, 12 pages; right?
 12 A. Yes.
 13 Q. And just so it's clear for the record,
 14 your report was dated August 12th of 2022?
 15 A. Yes.
 16 Q. That's the only report you've written?
 17 A. For this case, yes.
 18 Q. I'll bring it up so we're all looking at
 19 the same document. Sorry. You've prepared
 20 perhaps thousands of reports over the course
 21 of your consulting career?
 22 A. Yeah. It's been almost 30 years. Yeah,
 23 that's probably fair. I mean, I guess I
 24 don't have a number, but it's a lot .

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1 Q. All right. And do you have an
2 understanding of the purpose of your report
3 and your expert disclosure?
4 A. Well, my understanding of it is it's to
5 express my opinions and the description and
6 support for those opinions.
7 Q. All right. Is it your understanding
8 that your report is to be a complete
9 statement of all opinions?
10 A. That does sound -- that sounds fair.
11 Q. And would you agree your report is
12 intended to be a complete statement of the
13 basis for those opinions?
14 A. I would say my report plus my file in
15 its entirety as well as my experience would
16 all support the opinions in the report.
17 Q. All right.
18 A. The report is not -- by the way, the
19 report is not intended to include everything
20 that's in my file, right. That's not -- I
21 don't take that to be the understanding of my
22 report.
23 Q. All right. But you do, you do
24 understand this to be a complete statement of

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1 your opinions?
2 A. I do. I think that's fair, yeah.
3 Q. And is it?
4 A. Yes, it is.
5 Q. Does the report and your expert file
6 disclose all the facts and data you
7 considered in forming your opinions?
8 A. That plus just my professional
9 experience, but that's obviously not entirely
10 included in the file.
11 Q. All right. And is it your understanding
12 the report is intended to disclose any
13 exhibits you've used to summarize your
14 opinion at trial?
15 A. Well, I don't know that the report's
16 intended to have trial exhibits if that's
17 what you're suggesting because that isn't my
18 understanding.
19 Q. All right. It does not is what you told
20 me before; right?
21 A. Yeah. Like so for example -- yeah, I
22 would say it does not, yeah.
23 Q. Okay. But you do agree that your report
24 is the complete statement of all of your

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1 opinions?
2 A. That is true.
3 Q. And you'd agree that everything you
4 relied on in preparing your report has been
5 either identified in the report or identified
6 in the file that was sent to me?
7 A. Right, or identified as part of my
8 professional experience.
9 Q. Did you withhold any opinions from us?
10 A. No, I don't think so.
11 Q. You'd agree that good engineering and
12 scientific practice requires you to disclose
13 all of the facts and data you considered;
14 correct?
15 A. I think that's fair.
16 Q. And would good engineering and
17 scientific practice require you to consider
18 all reasonable alternatives or explanations?
19 A. Yes, I think that's fair.
20 Q. Is it your opinion that you applied good
21 engineering and scientific practices in this
22 evaluation?
23 A. Yes.
24 Q. Do you agree that if an opinion isn't

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1 stated in the report, it is either not
2 scientifically supportable or not relevant to
3 this case?
4 A. Or it's not an opinion that I hold.
5 Q. Yes.
6 A. I mean, there are plenty of opinions
7 that are not in the report, right, but they
8 don't apply.
9 Q. True. And I'm not going to ask you
10 opinions of what you think of me either.
11 I'll restate my question. If an opinion of
12 yours isn't stated in the report it's either
13 because you don't hold that opinion, it's not
14 scientifically supportable, or it's not
15 relevant for the case; is that fair?
16 A. I think that's fair.
17 Q. I think I asked you, but maybe I didn't
18 ask you before. Do you plan on doing any
19 additional work in this case?
20 A. Yeah, that was one of your first
21 questions. I'm going to look at what other
22 experts have to say in deposition or
23 otherwise, their entire files. If I feel
24 like additional work needs to be done to

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1 address what they say or what they have in
2 their file, then I would do that. If I'm
3 asked to prepare some kind of exhibit or
4 assist in the preparation of an exhibit for
5 trial if it goes to trial, I would do that.
6 If it goes to trial, I would also prepare for
7 trial.
8 Q. All right. But you don't have anything
9 planned currently?
10 A. That's true.
11 Q. Okay. I'm going to skip ahead to the
12 end the story here on Page 4 of your report.
13 You can see this, right, I'm sharing?
14 A. I can, yes, and I've also got it up on
15 my screen as well, full size as well, so yes,
16 I do see that.
17 Q. Section 7, Conclusions and Opinions, you
18 state four conclusions here; right?
19 A. Correct.
20 Q. And your report which you intended to be
21 complete only has these four conclusions;
22 right?
23 A. That's correct.
24 Q. All right. Up here you have a phrase

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1 listed -- "Your conclusions and opinions
2 listed below are to a degree of engineering
3 certainty."
4 A. Yes.
5 Q. What does that mean?
6 A. That means that in my opinion they are
7 the most likely -- they're -- they're, well,
8 I guess more likely than not to be true,
9 meaning that you can never be 100 percent
10 certain on anything. I mean, physics just
11 clearly just dictates that.
12 So the -- so my opinion, what I'm
13 stating is that my opinions are true to, to a
14 degree that's less than 100.00 percent, but
15 are the most likely scenarios and most likely
16 to be true.
17 Q. Well, you put a percentage there. Can
18 you give me a percentage of how certain your
19 conclusions are?
20 A. No. I can tell you that they're not
21 100.00 because nothing can be. Physics
22 dictates that.
23 Q. All right. And you can't give me any
24 other estimate than that?

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1 A. That's true.
2 Q. You're not certain, but you don't know
3 how uncertain you are?
4 A. I know I am certain to a degree of
5 engineering certainty which to me means it's
6 the most likely. I cannot give you a number
7 for that.
8 Q. All right. "Most likely" meaning what,
9 51 percent chance?
10 A. I cannot give you a number for that.
11 Q. Well, could it most likely be 10
12 percent?
13 A. No. I think most likely it would have
14 to be at least 51 percent.
15 Q. So somewhere between 51 and 99.99?
16 A. Yeah, if you want to give it a range.
17 Q. Is that the best range you can give it?
18 A. I cannot give you a number or a range
19 any different.
20 Q. You do have agree there is some
21 uncertainty though?
22 A. There, there is always uncertainty.
23 Physics dictates that. There is always
24 uncertainty.

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1 Q. And your conclusions are based upon your
2 current understanding of the facts; right?
3 A. That's true.
4 Q. You didn't state that. If new
5 information becomes available you may modify
6 your opinions; right?
7 A. I did.
8 Q. You did, meaning you said that you
9 haven't changed your opinions yet; right?
10 A. I did state that. I thought that was
11 your question was if I stated that.
12 Q. My question might have been a little
13 vague. I'm sorry.
14 A. I did state that as the answer.
15 Q. Okay. If the facts -- well, you have a
16 certain understanding of the facts; right?
17 A. I do.
18 Q. All right. And if that understanding
19 were to change, your opinions might change;
20 correct?
21 A. That's true.
22 Q. And if you -- you would agree that if a
23 plaintiff's recollection of the events
24 changes materially your opinions might change

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1 as well; correct?

2 A. That's true.

3 Q. And would you agree that if the jury
4 rejects your scenario, your factual
5 determinations and determines a different set
6 of facts that the jury would be justified in
7 rejecting your conclusions based upon your
8 facts?

9 A. I have no idea how to evaluate whether a
10 jury is justified or not. I don't know how
11 to do that.

12 Q. Okay. Well, let me ask it this way.
13 Well, I'll go with what I asked.

14 You have four conclusions; right?

15 A. Yes.

16 Q. Can you rank them as to which one is the
17 most certain?

18 A. No, I don't know that I would rank them.
19 I mean, I would say that number 1 is probably
20 the lowest because that first opinion is only
21 an opinion that had Instant Pot not performed
22 a suitable risk assessment that would
23 contribute, but, and I have no evidence that
24 they did perform such a risk assessment, but

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1 I don't -- honestly, since I wasn't present
2 at Instant Pot during the entire design and
3 development phase, I can't say I was there
4 and that they didn't do it.

5 Q. All right. Can you rank if that's the
6 least certain what's the next least certain?

7 A. Well, I mean, I don't know that I'm
8 necessarily ranking them, but I would say
9 that based upon the opinion itself that's how
10 I would probably put it in the ranking. The
11 others I'd say are probably all together all
12 about the same. They're all kind of related
13 to each other.

14 Q. All right. I'm just trying to get -- I
15 mean, you wrote in your report "degree of
16 engineering certainty" and these are your
17 opinions, not mine. I'm just trying to get a
18 sense of how certain you are. Are they
19 all -- so it's your testimony 2 through 4 are
20 all the same level of certainty?

21 A. No, it's my testimony that I can't give
22 you a number for any of that. And I really
23 don't know how else to -- you can ask it more
24 times if you'd like. It's already been asked

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1 I think a number of times, and the answer is
2 I don't have a number for you. I'm not going
3 to give you a percentage number because I
4 don't believe that can be done.

5 Q. Okay. I'm going to start with
6 Conclusion No. 1. You say it appears
7 unlikely that Instant Brands performed a
8 proper risk assessment. How unlikely?

9 A. I can't give you a number on that, but I
10 can tell you that they haven't -- I haven't
11 seen anything produced by Instant Pot that
12 demonstrates that they did perform such a
13 risk assessment.

14 Q. Have you seen anything that they didn't?

15 A. I, I guess I haven't seen a document
16 that Instant Pot says we chose not to do it.
17 I haven't seen that document if that's what
18 you're asking.

19 Q. Okay. So you don't have any evidence
20 either way?

21 A. Well, what I have is no evidence that it
22 actually occurred and I would assume that a
23 competent engineering department would have
24 kept such a document and that it would have

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1 been produced when it was asked for. That
2 would be my assumption. Now, I may be wrong.
3 Maybe they threw it away. Maybe they did the
4 work and said, well, we don't really care,
5 let's just burn it, or maybe they chose not
6 to share it. I honestly don't know because
7 I'm not in their heads. I can't answer that.
8 What I can tell you is that I haven't seen
9 any evidence that they did perform them.
10 That's all.

11 Q. All right. Is this a scientific opinion
12 or conclusion or is this just you evaluating
13 the evidence?

14 A. That one is an evaluation of the
15 evidence. Well, I guess it's also scientific
16 in the sense that it's my opinion that it
17 should have been done, but it's essentially
18 an evaluation of the evidence.

19 Q. But your opinion that it should have
20 been done is not a scientific conclusion. It
21 doesn't apply the laws of physics to that,
22 does it?

23 A. No, but it does apply good engineering
24 practice.

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1 Q. All right. I mean, the performance of a
2 risk assessment is a fact, right? Either
3 they did or they didn't?

4 A. I guess so, yeah.

5 Q. Right. And all you're saying in this
6 first conclusion is you haven't seen any, you
7 haven't seen any evidence that they did or
8 they didn't. That's your opinion or that's
9 your statement; right?

10 A. Yeah. And if you have evidence that
11 you'd like to show me that they did do it,
12 I'd be happy to review it, but it's my
13 understanding that that was asked for and it
14 was not provided which to me says that there
15 is no evidence that it's been done.

16 Q. Who manufactured the unit?

17 A. You know, I'd have to look at my notes.
18 I believe it's a manufacturer in Asia, but I
19 don't have that memorized.

20 Q. A manufacturer other than Instant
21 Brands, the defendant?

22 A. Yeah. I believe that Instant Brands
23 hired somebody to manufacture it. That's my
24 understanding.

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1 Q. All right. Do you know if that
2 manufacturer did a risk assessment during the
3 design process?

4 A. That I don't know. If they did I would
5 have hoped that it would have been provided,
6 but I don't know the answer to that since I'm
7 not there.

8 Q. Who would have provided it?

9 A. Well, presumably the manufacturer would
10 have provided it to Instant Brands because
11 Instant Brands would want to make sure that
12 it was done and then Instant Brands would
13 have it in their file.

14 Q. Again, this is your personal assumption?

15 A. That's my opinion on this case and how
16 it should have been done had it been done
17 competently.

18 Q. Is this FMEA assessment required by any
19 standard, any written standard?

20 A. I don't know that there is a written
21 standard or regulation requiring it. It's
22 just good engineering practice.

23 Q. Is a product necessarily unsafe if the
24 assessment is not completed?

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1 A. I guess not necessarily, but without
2 doing it the designer, distributor,
3 manufacturer or whoever it is that's bringing
4 the product forward won't know. They won't
5 know if it's safe or not without doing it,
6 and that's why it ought to get done.

7 Q. Is the product necessarily safe if this
8 assessment is done?

9 A. If it's done properly then the product
10 will be either safe or at least the hazards
11 will be known, but -- but I wouldn't
12 guarantee that it's safe because, I mean, you
13 can do a risk assessment and then still
14 choose to sell a hazardous product if you
15 want. I imagine that's not likely.

16 Q. Does a risk assessment require a
17 quantification of the risk?

18 A. To a certain degree, yes, meaning that
19 most risk assessments do assign rough
20 approximate values like, you know, 0 to 9 or
21 1 to 10 depending on how you do it to certain
22 levels of risk, like what is the level of
23 risk, what is the likelihood of occurrence,
24 what is the likelihood of determination if it

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1 does exist.

2 So there can be numbers applied,
3 but they're not like, you know, they're rough
4 numbers, but you can use quantities if you
5 like as part of doing the risk assessment.
6 That is possible.

7 Q. Have you done a risk assessment here?

8 A. I have not been hired to do a risk
9 assessment for this product, no.

10 Q. So you haven't done one?

11 A. Not for this product, correct.

12 Q. Is it your opinion that because the
13 product is defective, the assessment likely
14 wasn't done? Is that the nature of your
15 opinion?

16 A. Yes. Yeah, that essentially, that is
17 essentially what it boils down to.

18 Q. And you'd agree in every report that
19 you've ever written that do say the product
20 is defective you've included this exact
21 language?

22 A. I've included similar language, risk
23 assessment language to many of my reports. I
24 don't know if it's in every report, but many

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1 of them do include it because in my opinion
2 that's a very important part of engineering
3 design.

4 Q. Would you agree that this risk
5 assessment analysis or this paragraph in
6 Paragraph 1 really focuses on the conduct of
7 the parties involved?

8 A. I would say that it focuses on the
9 engineering design, that part of their
10 conduct, if you want to call it conduct. I
11 would say it's the engineering design.

12 Q. All right. But it's people doing it;
13 right?

14 A. It's always people doing it. I'm not
15 aware of any engineering designs that happen
16 out of thin air.

17 Q. All right. But you're, you're saying
18 that the conduct of the people who were
19 responsible for designing the product was
20 somehow lacking; right? That's what you're
21 saying?

22 A. I'm saying that the engineering design
23 is lacking.

24 Q. Okay. It's a process oriented opinion

88

1 then; correct?

2 A. Yes. This one is, is part of the
3 process of the engineering design.

4 Q. Okay. And would you agree that
5 Paragraphs 2, 3, and 4 focus on the product
6 itself, right, it's a product focused
7 analysis?

8 A. Product, well, I mean, 4 talks about the
9 totality of the evidence which is not just a
10 product. 3 is more product and 2 is more
11 product. So I'd say 2 and 3 are product and
12 4 is more sort of a totality of the evidence
13 which does include testimony.

14 Q. I don't remember the number, but it's
15 almost 15 or 20 pressure cookers that you've
16 examined over the years, they generally have
17 the same basic operating concept, do you
18 agree with that?

19 A. You mean of all of the pressure cookers?

20 Q. Yeah.

21 A. Yeah, I'd say about a hundred give or
22 take, but yeah. So in terms of the
23 electronic pressure cookers, their designs
24 are fairly similar across the board. I mean,

89

1 they've got differences, but at the core I
2 think their designs are fairly, fairly
3 similar.

4 Q. Okay. Do you own a pressure cooker at
5 home?

6 A. My wife does have a pressure cooker,
7 although I don't know that she ever uses it,
8 but I think she bought one, yeah, many years
9 ago.

10 Q. What brand?

11 A. I think it's an Instant Pot. I guess
12 I'm not sure, but I think it is. I think
13 that's what she got.

14 Q. Have you told her not to use it?

15 A. Well, I've told her about all these
16 cases and I've warned her. I haven't seen
17 her use it actually, I don't know, maybe in
18 years. I don't know if she still uses it or
19 not.

20 Q. She has used it though?

21 A. I'm sure she's used it at least once,
22 yeah, because I think I've seen her use it at
23 least once.

24 Q. And she was able to use it safely?

90

1 A. Yeah.

2 Q. You'd agree that pressure cookers are
3 used safely every day by tens of thousands of
4 people; right?

5 A. I don't know how many people use them
6 every single day, but I'm sure they
7 frequently do get used without injury.

8 Q. And that means they're being used
9 safely; right?

10 A. Well, I mean, I would -- I don't know if
11 you can make that assumption. I mean,
12 somebody could use it unsafely and get lucky
13 and not get hurt, so I wouldn't say that I
14 guarantee they were being used safely.

15 Q. Okay. But you can -- you'd agree that a
16 large number of people use pressure cookers
17 every day in the United States and maybe
18 Canada and they don't get injured; is that
19 fair?

20 A. Yeah. I mean, I don't, like I said, I
21 don't know the number, but I'm sure that
22 there are frequent uses where people are not
23 injured, yes.

24 Q. Okay. Do you know how many pressure

91

1 cookers are out there in the world?

2 A. That's a good question. No, I've never

3 really tried to put that number together. I

4 mean, I guess I don't have a specific number.

5 Q. Do you know how many Instant Pots are

6 out there?

7 A. You know, I'm not sure. I don't -- I

8 don't recall seeing production numbers for

9 Instant Pot, although I may have seen it. I

10 just don't recall seeing it. I assume it's

11 in the, in the many, many thousands. I don't

12 know if it's in the millions or not.

13 Q. In the course of your evaluation of

14 pressure cookers, have you ever looked up

15 reviews of pressure cookers online?

16 A. I have -- I have done that for other

17 cases. I don't know that I did that for this

18 case. I don't think I did.

19 Q. All right. Do you have any reason to

20 dispute that there are many positive reviews

21 out there for pressure cookers?

22 A. No.

23 Q. Would you agree that many find it a

24 useful and functional device?

92

1 A. I'm sure there are people who would find

2 it useful and functional.

3 Q. At one point in time your wife found it

4 useful?

5 A. I don't know how useful she found it,

6 but I know she used it.

7 Q. Okay. You'd agree there is a whole

8 cottage industry of pressure cooker cookbooks

9 out there touting the advantages of pressure

10 cooking?

11 A. Um, you know I've seen those like, you

12 know, at the book store and stuff. I guess I

13 don't really know much about how big that

14 industry is.

15 Q. All right. But you agree it exists;

16 right?

17 A. Well, I know it must exist because I've

18 seen those books, yeah.

19 Q. All right. You haven't seen cookbooks

20 about how to make toast, have you?

21 A. You know, that's funny. I might have

22 actually.

23 Q. Really?

24 A. Yeah. You know, I'm trying to think

93

1 where that was. It might have been like in

2 the man's guide of cooking or some weird -- I

3 remember it being funny, you know, like they

4 had these really stupid sort of instructions

5 like boiling eggs and stuff. I don't

6 remember all the details. I don't think it

7 was a serious cookbook to answer your

8 question.

9 Q. I'm starting to sense that as you're

10 going through.

11 A. Yeah.

12 Q. Okay. Let's see if we can get some, if

13 you can help me understand the product here.

14 So I am going to hopefully share a couple of

15 photos.

16 Do you see that, sir?

17 A. I do.

18 Q. And for the record it is, I'm just going

19 to read the last three numbers. It's a photo

20 from your file, the last three numbers 332.

21 A. Okay.

22 Q. Do you see the document?

23 A. I do see that up on the corner, yes.

24 Q. Does that help?

94

1 A. Yeah, 332. Okay.

2 Q. Okay. And this is a photo that Mr. King

3 took?

4 A. I believe he was the one who took that,

5 yeah.

6 Q. All right. This is a float valve;

7 correct?

8 A. It looks like the underside of the float

9 valve, yes.

10 Q. Okay. And this is in the bottom of

11 the -- this is in the lid, right, and the lid

12 is turned upside down; correct?

13 A. This is the underside of the lid, right,

14 the part of the lid that would face inside

15 the cooker.

16 Q. Okay. And I'm going to show you the

17 float valve moves up and down; right?

18 A. That's true.

19 Q. Okay. This photo shows it in the open

20 position; right?

21 A. That is the down position or the open

22 position, correct.

23 Q. Okay. Unpressurized?

24 A. This would be an unpressurized position

95

1 or the pressure is less than 1/2 to 1 psi.
 2 Q. All right. This is the closed position,
 3 the pressurized position in Photo 331; right?
 4 A. Yes, I would agree with that.
 5 Q. Okay. And I am going to reorient us.
 6 I'm going to flip your photo over.
 7 Do you see that?
 8 A. Yes.
 9 Q. Okay. And in the lower right I called
 10 it "Float Valve A." Do you see that?
 11 A. I do see those words, yes.
 12 Q. Okay. This is the same picture just
 13 turned around and I put an arrow that says
 14 "Up," right?
 15 A. That does appear to be the case, yes.
 16 Q. But you see the words "Up" with an
 17 arrow, right?
 18 A. Oh, yes. No, I do see the word, yes.
 19 Q. Okay. So all I did was this is on the
 20 underneath side of the lid, this would -- if
 21 you could climb into the pot with a camera
 22 and take a picture, this is what you'd see if
 23 the pot wasn't pressurized; right?
 24 A. Yes, or if the pressure was below 1/2 to

96

1 1 psi.
 2 Q. All right. That answered my question.
 3 So the float valve rises at 1/2 pounds per
 4 pound square inch?
 5 A. Yeah. It varies on the cooker, but in
 6 my experience they're usually between 1/2 and
 7 1 psi.
 8 Q. All right. And it stays elevated during
 9 the cook cycle; right?
 10 A. Yes.
 11 Q. And drops at 1/2, roughly 1/2 psi at the
 12 end of the cook cycle --
 13 A. Yes.
 14 Q. -- when the pressure is reduced; right?
 15 A. Yes, the ballpark, I think that's fair.
 16 Q. All right. And within seconds of the
 17 float valve falling the pressure will
 18 essentially equalize between the room
 19 pressure and inside the pot?
 20 A. Yeah, it may take a few seconds. I
 21 think that's fair. I think seconds is the
 22 correct assessment.
 23 Q. Okay. You'd agree that it would be safe
 24 to open the pot when the pressure relief

97

1 valve falls?
 2 A. If the pressure is reduced to that 1/2
 3 psi give or take I'd say, yes, that's true.
 4 Q. Okay. Well, have you ever had an
 5 occasion where the float valve dropped at a
 6 higher pressure?
 7 A. Dropped from the closed to open, no.
 8 Q. Okay. So would it be safe to open -- if
 9 you're looking at the pressure relief valve
 10 from the outside, would it be safe to open up
 11 when the pressure relief valve falls?
 12 A. Assuming that it's not clogged, then I
 13 would say yes.
 14 Q. All right. Would it be safe to open the
 15 pot at 3/4 pounds per square inch pressure?
 16 A. Yeah, I'd say 3/4 psi is probably still
 17 safe. I'd say so.
 18 Q. How about 1 psi, is that still safe?
 19 A. I'd say about you're starting to get
 20 into that depends range, but I would say most
 21 likely it would be safe.
 22 Q. All right. Just context, ambient
 23 pressure at sea level which I think we're
 24 both, you and I are roughly at is what, 14,

98

1 15 pounds per square inch?
 2 A. Yeah. I think it's like 14.3, but
 3 remember the 1 psi we're talking about here
 4 is relative to ambient, so that's 1 psi over
 5 ambient.
 6 Q. That was my next question, sir.
 7 A. Yeah.
 8 Q. So we're talking about when we say 1
 9 psi, it's 1 psi above what the normal
 10 pressure is around us?
 11 A. Correct, yeah. If it were 1 psi
 12 absolute this thing might buckle.
 13 Q. Okay. That would be -- yeah. And this
 14 pressure cooker operates at a relative psi
 15 of what, 12 pounds per square inch?
 16 A. I think it depends, but that's pretty
 17 typical.
 18 Q. All right. And the vessel itself is
 19 able to withstand that pressure; right?
 20 A. Oh, I'm sure the vessel could withstand
 21 more than that.
 22 Q. All right. Again, just putting this in
 23 context, car tires are what, 32, 36 psi above
 24 ambient?

99

1 A. Yeah, it depends. I mean, you know, for
2 some applications people run their tires much
3 lower, like if you're doing off-roading it
4 might be 5 to 15 or 20. Some people run it
5 much higher. I think you can run them 50, 60
6 even, but I think most passenger vehicles are
7 intended to be run in the 30's.

8 Q. Okay. Would you agree with this
9 statement: If a user closes the lid fully
10 and does nothing more than wait for the
11 pressure relief valve to drop before opening
12 the lid, there is no safety issue?

13 A. If we assume that the release valve is
14 not clogged in that position, then I would
15 say that's true.

16 Q. Would you agree that, I think you've
17 told us before you've criticized pressure
18 cookers before for a recessed float valve;
19 right?

20 A. Yeah. So there are, there are some
21 pressure cooker designs where the float valve
22 is in a deep well and there is no way to tell
23 by looking at it. There is no easy way to
24 tell whether it's up or down.

100

1 Q. All right. That's not this pressure
2 cooker; right?

3 A. That's true.

4 Q. Matter of fact, you've in other cases
5 touted the design of the Instant Brand's
6 float valve as the way it should be designed;
7 correct?

8 A. It's certainly one of the better designs
9 meaning that, and I think it's not just
10 Instant, but I think the new Maxi-Matic is
11 even better because it uses a red pin, but
12 they're both pretty good contrasts. I would
13 say it's among the better designs in terms of
14 visibility.

15 Q. Certainly not defective; correct?

16 A. That's still true, yeah.

17 Q. And you would agree -- well, let me --
18 let's display a couple of photos so we know
19 what we're talking about.

20 Okay. This is Photo 383, one of
21 your photos or one of Mr. King's photos I
22 should say. This is the top of the Instant
23 Pot pressure cooker; right?

24 A. Yes.

101

1 Q. And it's missing a cover on the left,
2 this kind of silver thing sticking up on the
3 left?

4 A. Yeah.

5 Q. There should be a cover over that;
6 right?

7 A. Well, I would call it, it's part of the
8 pressure control valve. It's basically a
9 weight with a valve seat on it.

10 Q. Okay. It's missing in the photo is my
11 point?

12 A. That's true.

13 Q. Okay. And over here, this silver
14 button, that's the top of the relief valve;
15 correct?

16 A. That's the top of the float valve.

17 Q. Float valve. Sorry, my mistake. It's
18 the top of the float valve. And this is in
19 the up pressurized position in this
20 photograph; correct?

21 A. No, I think this one -- yeah, I think
22 that is in the up position, yes. Yes.

23 Q. All right. Well, I can show you the
24 next photo which is 282. That's the down

102

1 position.

2 A. Yes, I do see that.

3 Q. Actually, let me make sure I got my
4 numbers right. 283 is up and 282 is down.
5 283 up, 283 down; right?

6 A. 28 -- 382 down.

7 Q. Yeah, 382, sorry. My bad.

8 A. Yeah, yeah.

9 Q. Okay. In the past you've said that the
10 Instant Pot has a high contrast silver button
11 on a black contrasting background, right,
12 that that's an advantage?

13 A. Yes, I agree.

14 Q. Okay. And would you agree that
15 Ms. Durham testified she knew she should wait
16 for the float, wait for the float valve, I
17 think she called it silver button, to drop
18 before opening?

19 A. I do recall something to that effect in
20 her deposition.

21 Q. Matter of fact, she testified she could
22 see it, that silver button on the black lid.
23 Do you recall that testimony?

24 A. Yeah. I think she was asked about the

103

1 button a number of times and I think that she
 2 did say that she believed that it was -- that
 3 she could see it. Yeah, I do believe she
 4 said she could see it.
 5 Q. All right. Did she ever say she
 6 couldn't see it?
 7 A. I don't think so.
 8 Q. Did she ever say she didn't understand
 9 what the purpose of it was?
 10 A. I don't think so. I don't recall her
 11 saying that.
 12 Q. Okay. You'd agree that this design and
 13 configuration of the silver float valve is a
 14 positive design feature for the Instant
 15 Brand's product?
 16 A. The high contrast and visibility is a
 17 positive feature, correct.
 18 Q. Okay. And you agree that this design
 19 and configuration increases the safety of the
 20 product over other designs?
 21 A. It is better than other designs. There
 22 are designs that are worse.
 23 Q. Turning back to the photograph ending
 24 383, again when the float valve is up it

104

1 doesn't extend above the black plastic
 2 surrounding it; correct?
 3 A. No, I believe in the subject it's fairly
 4 flush.
 5 Q. All right. And would you agree that
 6 that's a positive design feature as well?
 7 A. Um, I would say it's all part of the
 8 same piece meaning it does allow for easier
 9 visibility with the high contrast and I think
 10 its position is a plus.
 11 Q. And would you also agree that the fact
 12 that it doesn't extend too high eliminates
 13 the chance that it might be accidentally
 14 depressed and unlocked?
 15 A. It does mitigate that risk, yes.
 16 Q. And the, that float valve we're talking
 17 about, that silver button that goes up and
 18 down, that intersects with a locking
 19 mechanism; correct?
 20 A. Yes.
 21 Q. Or interlocked maybe would be a better
 22 description?
 23 A. That's fair.
 24 Q. Okay. And when the float valve is up,

105

1 the lock is engaged; right?
 2 A. If the lid is in the proper position and
 3 the slider mechanism is positioned to allow
 4 the float valve to enter an opening in the
 5 slider then, then it would become locked,
 6 yes.
 7 Q. Okay. In normal operating conditions
 8 when the float valve is up the unit is
 9 locked; correct?
 10 A. Yes, I think that's fair.
 11 Q. And when the float valve drops it
 12 unlocks the unit for opening, correct, under
 13 normal operating conditions?
 14 A. Yes. If the float valve is in the down
 15 position it will not provide a lock.
 16 Q. And that's a design feature; correct?
 17 A. Yes.
 18 Q. I mean, the lock is a positive design
 19 feature. It makes the unit -- it makes the
 20 product safer; correct?
 21 A. Yes, correct.
 22 Q. Okay. The lid of this pot -- actually,
 23 I'm going to show you this. Sorry, my share
 24 thing is in the way. This is a photograph

106

1 you provided us of one of the exemplar units.
 2 I think it's --
 3 A. Okay.
 4 Q. I think it's -- I don't know if it ends
 5 with .1-.2 pressure cooker lid with
 6 base.jpeg.
 7 A. Okay. I see that, yeah.
 8 MR. CALLAHAN: And I think we're
 9 up to Exhibit No. 9.
 10 (Exhibit Rondinone-9 was marked
 11 for identification.)
 12 BY MR. CALLAHAN:
 13 Q. This is one of the exemplars that you
 14 examined or were in Berkeley Engineering's
 15 possession I should say?
 16 A. I think -- I think that's fair.
 17 Q. Okay. And just an overall visual of it,
 18 we have the base unit and the lid on top. Do
 19 you see the lid?
 20 A. Yes.
 21 Q. Okay. There is a handle on it?
 22 A. Yes.
 23 Q. How much force does it take to close the
 24 lid, do you know?

107

1 A. You know, I don't know that I've
 2 measured it with these, but typically when
 3 there is no pressure and the lock is not
 4 engaged, it's probably just a few pounds of
 5 force, fairly low.
 6 Q. Applied where?
 7 A. Well, it depends on where you -- I mean,
 8 if you grab it in the middle it would be
 9 applied as a twist in the middle or you could
 10 apply it to the ends of the handle as well.
 11 Q. Well, that's my question. You say apply
 12 a few pounds of force. Where are you
 13 applying the force to close the lid?
 14 A. Oh, so --
 15 Q. Or if you'd like, how much torque is
 16 required to overcome the friction?
 17 A. Yeah. So I would say that it's not
 18 much. It's in the handful of foot-pounds at
 19 most in terms of torque. It depends. It
 20 depends on the weight of the cooker interface
 21 and like you said on the friction, but it's a
 22 fairly small torque. I don't have a number
 23 for this, for this particular one. I don't
 24 think we measured it.

108

1 Q. Okay. It's possible to measure though;
 2 right?
 3 A. Oh, it is possible, yes.
 4 Q. You'd agree however much force it takes
 5 to close the lid, it's fairly easy to close?
 6 A. Yes, that's fair.
 7 Q. And the only thing resisting when
 8 closing it is the friction between the lid
 9 and the base unit; correct?
 10 A. Yes.
 11 Q. That's so that the user can close this
 12 with two fingers; right?
 13 A. Yeah, I bet they could.
 14 Q. And when closing the unit, the friction
 15 between the feet and the base and the counter
 16 it's sitting on is enough to overcome the
 17 twisting action to close the lid; right?
 18 A. Yeah, I think that's fair.
 19 Q. You don't need -- you don't have to hold
 20 the base with one hand and close the lid with
 21 the other?
 22 A. No, I don't think that's required.
 23 Q. It's not a pickle jar; right?
 24 A. That's true.

109

1 Q. Okay. The photo that's in front of you,
 2 the exemplar photo, can you tell me if this
 3 lid is fully closed?
 4 A. That lid looks like it's either fully
 5 closed or close to closed because the ears on
 6 the lid are fairly, they're fairly well
 7 aligned with the handles on the base. I
 8 can't tell from this orientation if it's
 9 centered or not.
 10 Q. All right. So one way to tell if the
 11 lid is closed is if the fins on the lid line
 12 up with the handles?
 13 A. I think that's fair.
 14 Q. All right. Is another way this
 15 particular mark here on the front of the lid?
 16 A. Yes. I believe that mark will line up
 17 with, although I don't see the mark in the
 18 photograph, but I believe that there is an
 19 alignment mark as well.
 20 Q. Is the alignment mark in the center of
 21 the control panel?
 22 A. I can't see it in the photo, but that
 23 wouldn't surprise me if that were the case.
 24 Q. Okay.

110

1 A. I believe that -- I just don't see it in
 2 the photo.
 3 Q. Is the lid difficult to close fully?
 4 A. I would say no.
 5 Q. Do you think it's something that a
 6 manufacturer could reasonably expect a
 7 consumer to accomplish?
 8 A. I mean, I think that, I think that a
 9 reasonable consumer certainly could close it.
 10 There is no guarantee that they will close it
 11 all the way, but I think that they certainly
 12 could.
 13 Q. Is that a reasonable expectation that
 14 the consumer would close the lid properly?
 15 A. Well, I think the expectation is that
 16 the consumer may believe that they closed the
 17 lid all the way, but in this position here
 18 which appears to be mostly closed, if not
 19 fully closed, it's mostly closed, may still
 20 be an expectation that the user may do that.
 21 I would not rule -- I would say that a
 22 manufacturer, designer, distributor would
 23 have to expect that users may not fully close
 24 it, but they may nearly fully close it and

111

1 that that would be an anticipated use of the
2 product.

3 Q. How many indicators are there for the
4 user to tell if it's fully closed?

5 A. I would say visually it would be the
6 alignment mark and the ears.

7 Q. The what?

8 A. The alignment mark and the ears.

9 Q. Anything else?

10 A. I mean, I guess if they shone a light
11 into the little float valve recess they might
12 be able to see the slider. I don't know that
13 anybody would do that though. I mean, I
14 would, but I don't know that a normal user
15 would.

16 Q. There is a stop, is there not?

17 A. There is a stop. You could hold it
18 against the stop, but if you were to close it
19 and bounce off the stop then you may end up
20 back into a position like this.

21 Q. How often does that occur?

22 A. I have not done statistics on that.

23 Q. So you can't tell me if it occurred, if
24 it's ever occurred, can you?

112

1 A. Well, I mean statistically you know it
2 must have occurred, but the question is how
3 often. I couldn't tell you.

4 Q. Why can you say it must have occurred?

5 A. Because the simple physics dictates that
6 there is going -- that there can be an
7 elastic response if you -- if you close
8 something against the bump with energy there
9 will be an elastic response. The question is
10 how are you holding it when you get the
11 elastic response, how much force is in the
12 elastic response and, you know, does it move
13 back a millimeter or multiple millimeters or
14 close to zero. I haven't done the
15 statistics.

16 Q. So you can't offer a scientifically
17 valid opinion about how far it would bounce
18 or if it would bounce back?

19 A. No, that's not true. The physics
20 dictates that it could easily bounce back.
21 The question is how far and how often, I
22 can't tell you.

23 Q. And you can't -- you've never tested
24 that to tell us that?

113

1 A. No, I don't think I have.

2 Q. So do you think the full stop is a
3 safety feature or a safety detriment?

4 A. No, I think that the stop is, would be a
5 good part of the design because it does
6 provide tactile feedback.

7 Q. You can turn it until it stops. Let it
8 go and it's closed; right? That's a
9 positive?

10 A. Yeah. If you turn it until you're
11 stopped -- until it stops and you're still
12 holding it and you hold it against the stop,
13 then yes, it would be fully closed.

14 Q. How would you close it? Isn't that what
15 you would do?

16 A. I suppose. I mean, I don't use these,
17 so I'm not really -- I don't know what I -- I
18 don't know what I'd actually do in cooking,
19 but I know as an engineer that's how I would
20 do it.

21 Q. Would you agree the marking on the front
22 of the base and the lid is a positive design
23 feature helping the user know when it's fully
24 closed?

114

1 A. Yeah, I would say that's a positive
2 feature.

3 Q. And the fins on the handles lining up,
4 you would also say that's a positive feature
5 to help the user understand when it's fully
6 closed; right?

7 A. Yeah, I'd agree with that.

8 Q. And even if, even if they spun it closed
9 and it bounced back as you suggested could
10 occur, I mean, the fins would not be lined up
11 anymore; right?

12 A. They may not be perfectly centered, but
13 they may still be lined up. Like it looks to
14 me like the fins are lined up but not
15 perfectly centered in the photograph.

16 Q. Did Durham testify that she knew how to
17 close the lid?

18 A. You know, I don't recall her testimony
19 to that effect, but I don't think she ever
20 testified that she didn't know how. I don't
21 recall her specific testimony.

22 Q. Do you remember her testimony? I asked
23 her, do you remember on the incident that you
24 turned the lid all the way so it stopped, and

115

1 her testimony was yes? Do you remember that?

2 A. I don't, but that sounds reasonable that
3 she would have said that. I mean, that
4 sounds about like the recollection, what it
5 ought to be.

6 Q. And she also confirmed that the flaps
7 and the handles met after she closed it on
8 the day of the incident. Do you remember
9 that?

10 A. I don't remember that, but if she said
11 it then I would agree that that's what she
12 said.

13 Q. Do you have any reason to believe she
14 didn't understand how to determine if the lid
15 was closed properly?

16 A. No, I guess I don't have an opinion on
17 that. So, yeah, I guess I don't have an
18 opinion on that.

19 Q. And do you remember any testimony about
20 that?

21 A. No, but if what you read me was from her
22 deposition, then I'd say that that's what she
23 said.

24 Q. The examination by Berkeley Engineering

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1 didn't reveal any difficulty in closing the
2 lid, did it?

3 A. It did not reveal any difficulty in
4 closing.

5 Q. And during examination the unit could be
6 fully closed to the stop with a simple twist
7 of the finger; right?

8 A. I believe that it could be easily
9 closed.

10 Q. And it was, it was completely closed by
11 Mr. King during his inspection; right?

12 A. I think that is true.

13 Q. And when it is fully closed it operates
14 appropriately; right?

15 A. I believe in the, yeah, in the three or
16 so tests that were done with it I believe
17 that it did operate as intended when it was
18 tested.

19 Q. So nothing in your testing of the unit
20 contradicts Ms. Durham's recollection that
21 she understood how to close it and that she
22 did in fact close and check it on the date of
23 the incident?

24 A. Well, I don't know how any of our

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1 testing could support or not support what she
2 said in her deposition. I think if that's
3 what she said then that's what she said,
4 right. I wouldn't argue with what she said.

5 Q. But your testing doesn't contradict what
6 she said, does it?

7 A. Well, the testing can't contradict or
8 support what she said, right. I mean, nobody
9 was there videotaping what she did. All the
10 testing says is that it can be closed and we
11 were able to close it and I think so was your
12 expert. I think that's all the testing says.
13 It can't say what she said about it.

14 Q. But you could have done testing that
15 confirmed that it couldn't be closed; right?
16 That might have negated the test?

17 A. Oh, I see. Okay. So you're saying that
18 the testing demonstrates that what she said
19 could be true? Is that what you're saying?

20 Q. Sure.

21 A. Okay. Yeah, I think the testing
22 supports that what she said could be true.

23 Q. All right. And nothing in your testing
24 supports the opposite conclusion that what

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1 she said couldn't be true; right?

2 A. None of the testing proved that what she
3 said couldn't be true, but it doesn't prove
4 that what she said was true. It just said
5 that it could be true.

6 Q. I think you mentioned this before. The
7 lid turns counterclockwise to close; right?

8 A. No, I believe this lid turns clockwise
9 to close.

10 Q. Oh, yeah, you're right. Sorry, I'm
11 backwards.

12 A. I think she was backwards in her
13 testimony as well which frankly doesn't
14 surprise me.

15 Q. But the witness -- let me ask it this
16 way. The way this lid closed is what you
17 would expect, what the user would expect, and
18 is a positive design feature. Is that -- are
19 those all fair statements?

20 A. That's fair.

21 Q. Okay. I probably should be doing the
22 righty-tighty lefty-loosey thing to try to
23 figure that out; right?

24 A. Exactly.

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1 Q. In other pressure cooker matters not
2 involving Instant Pot you've criticized the
3 design of the manufacturer, design of the
4 product because in your opinion the user
5 could partially close the lid without
6 engaging the locking mechanism; correct?

7 A. Yes.

8 Q. And that could create a risk that the
9 pot could be pressurized but not locked;
10 right?

11 A. Yes.

12 Q. And that's not your opinion -- that
13 didn't happen in this case in your opinion?

14 A. That's correct.

15 Q. We just spoke about some positive
16 indicators for the user to determine when the
17 lid was fully closed, but you'd agree that
18 Instant Pot has two other positive safety
19 features that protect the user if they do in
20 fact fail to close the lid fully?

21 A. Is there a question there? I don't know
22 what the question is.

23 Q. All right. If this lid is in place and
24 it's not fully closed -- well, let me put it

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1 this way. Let me start over. There is,
2 there is a magnetic switch on this product;
3 correct?

4 A. Yes. Yes, it does use a magnetic switch
5 assembly to determine the position of the
6 lid.

7 Q. Okay. And if the lid is not in the
8 proper position, fully closed, the unit will
9 not heat; correct?

10 A. No, that's not quite true. So on this
11 particular model the lid can be closed within
12 about, I think it's about an inch of full
13 closure and the magnetic sensor will read it
14 as fully closed even though it's not fully
15 closed.

16 Q. Is that unique to the Durham product or
17 is that a design feature of all Duo 60
18 Pluses?

19 A. I don't think it's unique to the Durham
20 product, because I have seen other Instant
21 Pots that will acknowledge closure with the
22 magnet before it's fully closed, but I
23 believe I've also seen Instant products which
24 require that it be fully closed to

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1 acknowledge it or basically fully closed,
2 much closer than the full inch I think that
3 this one showed.

4 So I don't think it's unique to
5 this one pressure cooker, but I know that
6 it's, there are other instant pressure
7 cookers that definitely read fully closed
8 until they're much more fully closed. Does
9 that make sense? I don't know if I'm being
10 clear on that.

11 Q. All right. Let's explore the switch.
12 If the base doesn't sense that the lid is in
13 the correct position, whatever that means, it
14 will not heat; right?

15 A. That's true.

16 Q. Okay.

17 A. When the base, when the base detects the
18 lid in a position that it believes is not
19 properly closed, then it won't heat.

20 Q. In the past you've criticized
21 manufacturers for not having a magnetic
22 switch sensor; correct?

23 A. That's true.

24 Q. In those other cases you offered an

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1 Instant Pot as an example of a product using
2 the magnetic switch as a positive design
3 feature?

4 A. Yeah, the Instant Pot, I think numerous
5 Tristars and Maxi-Matics, and there are
6 others, too, that also use it, but yeah, the
7 Instant Pot is among the designs that does
8 use a magnetic switch.

9 Q. And you'd agree the magnetic switch is a
10 positive safety feature?

11 A. Yes, I agree.

12 Q. And the way the electronics are in the
13 Instant Pot product, if the user wants to
14 remove the lid and use it for a
15 non-pressurized cooking procedure, it still
16 heats; right?

17 A. Yes, and that's common with pressure
18 cookers with magnetic switches. They're --
19 they are wise enough to cook with no lid.

20 Q. All right. So it only senses if the lid
21 is on, but not in the right position?

22 A. That's the intention of the sensor, yes.

23 Q. All right. This Durham pot also if the
24 slider hasn't fully passed over the top, the

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1 tab, sorry, the float valve will not rise;
 2 right?
 3 A. If the slider is slid regularly outwards
 4 such that the hole in the slider or the slot
 5 in this case I think doesn't line up
 6 properly, then yeah, it will prevent the
 7 float valve from rising. The body of the
 8 slider will strike the top of the float valve
 9 and will prevent it from rising properly.
 10 Q. And that's a positive design feature;
 11 correct?
 12 A. Yes.
 13 Q. And the intent of that design feature it
 14 is preventing pressurization without the lock
 15 fully engaged; right?
 16 A. Yes.
 17 Q. You state that in your report; right?
 18 A. Yes.
 19 Q. And your testing and examination of the
 20 product revealed that the magnetic switch
 21 functioned; correct?
 22 A. The magnetic switch did function, but it
 23 showed -- it presented to the base unit that
 24 the lid was fully closed about an inch before

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1 it was fully closed.
 2 Q. And you've also confirmed that the
 3 interlock, if the pins extended the float
 4 valve will not rise; right?
 5 A. If the -- right. If the slider has
 6 moved radially outward to interfere with the
 7 float valve, it will prevent the rising of
 8 the float valve.
 9 Q. Okay. And if the float valve can't rise
 10 the unit cannot pressurize; right?
 11 A. Barring a clog. Yeah, barring a clog
 12 that is true.
 13 Q. All right.
 14 MR. KRESS: Dennis, I don't want
 15 to interrupt your train of thought. We've
 16 been going about an hour and a half. Five
 17 minutes?
 18 MR. CALLAHAN: Sure.
 19 MR. KRESS: All righty. Off the
 20 record, please.
 21 THE VIDEOGRAPHER: 3:20.
 22 THE WITNESS: Five minutes.
 23 (Recess; 3:20 p.m.)
 24 - - -

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1 (Resumed; 3:31 p.m.)
 2 THE VIDEOGRAPHER: We're back on
 3 the record, 3:31.
 4 BY MR. CALLAHAN:
 5 Q. I'm going to turn our attention to
 6 pressure control of the unit. First of all,
 7 the Instant Pot product has electronic
 8 pressure limit; correct?
 9 A. Yeah, I believe it does.
 10 Q. So when it reaches operating pressure,
 11 the heating stops and the pressure is
 12 stabilized or decreases until it reaches a
 13 threshold and heats up again; right?
 14 A. Yeah. There is a little bit of a
 15 wiggle, but it's definitely controlled.
 16 Q. Okay. That's a positive feature?
 17 A. Yeah. Yeah, in fact I think that's
 18 probably the only way you can do it with an
 19 electronic.
 20 Q. And that is a -- your testing
 21 demonstrated that pressure, electronic
 22 pressure control still functions today;
 23 correct?
 24 A. I believe that's true, yes. Yeah.

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1 Q. Okay. We talked about that weighted
 2 relief valve cap earlier. That also allows
 3 excess pressure to bleed off, does it not?
 4 A. Yes, it does.
 5 Q. That also allows the user to quickly and
 6 safely release the pressure at the end of a
 7 cook cycle, cook cycle if they choose to;
 8 correct?
 9 A. Yes. Yes, it does.
 10 Q. Again, both positive safety features?
 11 A. Yes. I mean, there are better ways to
 12 implement the weight valve. So, for example,
 13 this weight valve requires the user to place
 14 their hand at the same exit point which I
 15 think is not the best way to do it. There
 16 are better designs where they essentially use
 17 a remote lever so that you don't have to
 18 place your hand on the steam exhaust to
 19 change it, but otherwise I'd say it's
 20 definitely a useful feature.
 21 Q. Okay. What happened to the relief valve
 22 in this particular product, do you know?
 23 A. I do not know.
 24 Q. You can't operate the product without

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1 it; correct?

2 A. Well, not under pressure.

3 Q. Okay. Do you know if she was using the

4 pressure relief valve or the pressure relief

5 cap at the time of the incident?

6 A. Yes, I believe she was.

7 Q. And where did it go?

8 A. I still don't know that. I don't know

9 the answer to that.

10 Q. All right. The -- I'm going to share my

11 screen. This is the picture of Float Valve

12 A. Basically this is the underneath of the

13 lid, the float valve in the down position;

14 correct?

15 A. Yes.

16 Q. There is the silver shaft, right, and

17 there is two holes in the shaft. Why?

18 A. I believe that assists in the venting of

19 the unit, meaning the release of pressurized

20 vapor.

21 Q. How does it do that?

22 A. Well, the two holes as well as the

23 orifice or annular orifice around the

24 cylinder will allow pressurized vapor to

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1 exhaust through the opening in the lid out

2 the top of the lid where you had the button,

3 the little silver button side of the lid, so

4 it gives you a path. It's one of the

5 available paths for the exhaust of

6 pressurized vapor.

7 Q. All right. So these two holes in the

8 float valve, a positive design feature?

9 A. Um, yeah. I'd say it's better there

10 than not there. I'd say that's true.

11 Q. All right. And this comes into play

12 when the float valve is -- when the lid is

13 not fully locked and the float valve is down;

14 right?

15 A. This applies any time the float valve is

16 down. So, for example, if the lid is fully

17 locked and the float valve is down, vapor

18 will still escape even, you know, while it's

19 pressurizing, for example.

20 Q. Okay. Until the pressure reaches 1/2 to

21 3/4 psi and the float valve locks up?

22 A. Yeah, typically 1/2, a little bit more,

23 yeah, then the float valve will rise.

24 Q. Okay. But you need a path for the steam

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1 to escape, for the pressure to escape when

2 there is something -- when you don't want the

3 lid to pressurize or the unit to pressurize;

4 right?

5 A. Um, yes, but --

6 Q. When this -- when this comes into play

7 is a situation where the lid is not fully

8 closed, the float flap is locked down, and

9 that hole allows steam to escape to prevent

10 pressurization if it's not locked?

11 A. If it's not locked and the slider is

12 preventing the rising of the float valve,

13 yes, steam will escape. You can still get

14 pressure buildup, but it will be venting

15 while that's happening.

16 Q. If the valve is down -- if the valve

17 is -- strike that. If the pressure -- I'm

18 having a hard time. I need a longer break.

19 If the float valve is locked down

20 and pressure is escaping through the orifice

21 and the bypass hole, how much pressure can

22 build within the unit?

23 A. Oh, you know, that's a good question.

24 On this particular unit I guess I'm not sure,

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1 but I don't believe it can achieve operating

2 pressure. So I believe it's less than that,

3 but I haven't -- I don't think I've measured

4 it on this particular model.

5 Q. Is it less than a pound per square inch?

6 A. That I don't know. That probably

7 depends on the thermal, the thermal mass of

8 the contents. I don't -- like I said, I

9 would say that it's almost certainly less

10 than operating, but I couldn't give a number

11 to it since I didn't test it.

12 Q. Would you agree that the bypass hole in

13 the float valve is a positive design feature?

14 A. Yeah, I think it's better that it's

15 there. I think that's true.

16 Q. Okay. So when the lid -- when the --

17 when a user is using the pot and the lid is

18 fully closed and the float valve is up

19 because it's under pressure, the lid is

20 locked; correct?

21 A. That is correct.

22 Q. And the slider is blocked by the pin

23 from allowing the locking tab to go over

24 the -- or the locking pin to slide over the

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1 tab; right? That's what happens?
 2 A. Essentially. I mean, basically what
 3 happens is the, the position of the float
 4 valve engages the slider so that when someone
 5 does attempt to open it a resistive force is
 6 applied by the pin right on the flange of the
 7 base, and I believe for this design, for this
 8 pressure cooker that force would be
 9 sufficient to prevent a user from opening it.
 10 Q. This design being what, this Instant Pot
 11 product?
 12 A. This Instant Pot product, correct.
 13 Q. Okay. You haven't made any opinions or
 14 offered any opinions in your report that this
 15 lock is insufficient?
 16 A. That's true.
 17 Q. Okay. And is that because it's your
 18 belief it is sufficient?
 19 A. I believe this lock is sufficient to
 20 prevent a user from opening it when the lock
 21 is engaged.
 22 Q. Okay. In addition to the locking pin,
 23 friction between the lid and the base
 24 contributes to the resistance; correct?

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1 A. That's true.
 2 Q. And it can be substantial friction;
 3 correct?
 4 A. That's also true.
 5 Q. I mean, even without a lock at certain
 6 pressures the friction is so great that a
 7 user cannot open the pot even without the
 8 lock?
 9 A. I agree with that.
 10 Q. Have you ever measured the friction of a
 11 pot while under pressure?
 12 A. I don't think we've measured the
 13 friction. We have taken pots and opened them
 14 under pressure and it's our experience that
 15 above about 4 psi a normal human force is not
 16 capable of opening the lid even if the
 17 interlock is not functioning. So usually
 18 pressures that are above 4, you know, or a
 19 little higher than that generates sufficient
 20 friction between the lid and the base that a
 21 normal person couldn't open it, at least not
 22 without a tool, not by hand.
 23 Q. Okay. I mean, it doesn't matter what
 24 the pressure is, if you use the right tool

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1 you can open it; right?
 2 A. Yeah. I mean, if you had a six-foot
 3 cheater bar you could probably open this one
 4 at full pressure. I don't know that I'd
 5 recommend doing that, but I guess it is
 6 possible. I was referring to somebody using
 7 it like grabbing the handle, for example,
 8 just by hand.
 9 Q. Okay. And the locking mechanism comes
 10 into play -- well, we talked about earlier in
 11 your deposition if the float valve is up,
 12 it's an indicator the unit is under pressure;
 13 right?
 14 A. Yeah, that is true.
 15 Q. And if a user sees and recognizes the
 16 float valve, they know it's under pressure,
 17 they know it shouldn't open, they should wait
 18 for the valve to drop; right?
 19 A. If they recognize that as the indicator,
 20 then yes. Like I would recognize that, for
 21 example, but I can't speak for everybody.
 22 Q. All right. Well, Ms. Durham recognized
 23 it too in her testimony; right?
 24 A. I think she said something to that

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1 effect. I don't recall her specific words.
 2 Q. Okay. So but just the locking mechanism
 3 we're talking about comes into play if
 4 someone tries to open it while it's under
 5 pressure, but they don't realize it's under
 6 pressure?
 7 A. It prevents somebody from opening it
 8 while the float valve is up. Whether it's
 9 under pressure or not it will prevent someone
 10 from opening it if the float valve is in the
 11 up position.
 12 Q. Okay. Under normal conditions the float
 13 valve is up while it's under pressure; right?
 14 A. Under normal operating conditions as
 15 long as the pressure is above that 1/2 give
 16 or take, then yes.
 17 Q. Okay. And if you don't think the
 18 locking mechanism in this Instant Pot is
 19 defective, you'd agree it's a positive design
 20 feature; correct?
 21 A. I would.
 22 Q. It sufficiently prevents accidental
 23 openings?
 24 A. If the float valve is up it will prevent

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1 accidental opening. I agree with that.
 2 Q. You talked a little bit about, well,
 3 using a tool to open it, but does the lock
 4 also have like a tactile warning reminder
 5 role, too?
 6 A. I don't know about that. I think a
 7 properly functioning interlock when it's in
 8 the locked position will prevent someone from
 9 opening it, period. Like it's not just, hey,
 10 be aware, it's you can't do it. Go ahead,
 11 put your hands on it, give it a shot, you
 12 can't open it, and I think that's how this
 13 one behaved.
 14 Q. But I mean it closes easily; right?
 15 A. Yes.
 16 Q. I think you said a pound of force at the
 17 handle?
 18 A. Yeah, give or take or a few pounds, but
 19 yes, I would agree that it's, it would be
 20 easy to close.
 21 Q. Okay. And if force has ten times the
 22 closing force to open, it does indicate
 23 something to the user; right? You'd agree
 24 with that?

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1 A. It would indicate something, but it
 2 would be up to the user to interpret what
 3 force is good and what force is too much and
 4 what force is not too much, right, and I
 5 don't believe Instant Pot provides any
 6 direction to the user on what that value
 7 would be and I think that would be
 8 interpreted differently by different users.
 9 Q. Okay. You'd agree -- well, there is a
 10 warning, do not force open; correct?
 11 A. That's typical of the words that are
 12 used. I don't -- I haven't memorized this
 13 manual, but that's typical.
 14 Q. And you'd agree not forcing it open
 15 would be something -- if you're getting a
 16 tool out, you're forcing it open; right?
 17 A. That I think is fair.
 18 Q. Okay. How about calling over someone to
 19 hold the pot still while you grab onto it and
 20 twist it with both hands, is that forcing it
 21 open?
 22 A. I think some users would interpret that
 23 as forcing it open, but I don't think that
 24 everybody would interpret that as forcing it

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1 open at least based on my experience.
 2 Q. How about you?
 3 A. I would probably interpret that as
 4 forcing it open if I asked a second person to
 5 help.
 6 Q. Okay. And if your wife asked you to
 7 come hold it while she tries to force, twist
 8 the lid, you wouldn't do that, would you?
 9 A. I would not.
 10 Q. Okay. Do you agree that Ms. Durham
 11 testified she knew not to force open the lid?
 12 A. You know, I don't recall her specific
 13 words, but that wouldn't surprise me if
 14 that's what she said.
 15 Q. Did you read Durham's testimony where
 16 she said she actually tested the unit before
 17 using it?
 18 A. You know, I don't -- I don't recall that
 19 specifically. It does seem somewhat
 20 familiar. I don't recall that specifically.
 21 Q. You don't remember her saying she tried
 22 to force it open and couldn't?
 23 A. I don't remember exactly what she said.
 24 I think there was something about she may

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1 have tested it or applied some force to it,
 2 but I don't -- I don't recall what her words
 3 were exactly.
 4 Q. All right. And she certainly didn't
 5 measure the force she applied?
 6 A. I'm sure that's true.
 7 Q. All right. But whatever she did, she
 8 couldn't get it open and she tried?
 9 A. Yeah. I mean, I would let her testimony
 10 speak for itself. I don't remember exactly
 11 what she said.
 12 Q. All right. Well, if we assume she tried
 13 to open it and couldn't, it demonstrates the
 14 efficacy of the locking mechanism?
 15 A. Not necessarily, because it could simply
 16 be the pressure that's high enough to hold it
 17 locked regardless of the locking mechanism.
 18 Q. The pressure which creates friction on
 19 the lid?
 20 A. Exactly.
 21 Q. Well, between the lid and the base?
 22 A. Yes, that's fair.
 23 Q. Okay. Berkeley Engineering's testing
 24 demonstrated a lock function?

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1 A. Yeah, I think that's fair.
 2 Q. And the testimony by SEA, defense
 3 expert, demonstrated the lock function as
 4 well; correct?
 5 A. I think -- you know, I don't remember
 6 every bit of his testing, but I imagine that
 7 it did. I think it did.
 8 Q. How much force -- when you say that this
 9 locking mechanism is good enough, how much
 10 force do you think it could withstand applied
 11 at the edge of the rim, edge of the lid?
 12 A. Oh, you know what, we didn't measure
 13 that on this unit. Usually when the -- well,
 14 the UL standard is, requires 100 pounds of
 15 force applied at the outmost portion of the,
 16 of the lid handle, but it's my experience
 17 that, you know, numbers that are lower than
 18 100 are still more than a single user could
 19 do. Like I would say that 50 to 75 pounds at
 20 the edge of a lid is probably all somebody
 21 could do and they'd have to be trying. I
 22 mean, that's still using their hands, no
 23 tools, but you'd have to be trying to do
 24 that. I don't -- I don't think you'd get

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1 anywhere near 100. I don't think you could
 2 do that.
 3 Q. All right. And you're not sure that
 4 someone could exert 50 pounds at the edge?
 5 A. No, I think you could do 50. I think
 6 I've been able to do 50. So I don't think
 7 I've been able to do 100 without, you know,
 8 using a second person or a tool.
 9 Q. Okay. Do you think a normal person
 10 could exert 75 pounds of force at the edge of
 11 the rim -- edge of the lid? Sorry.
 12 A. I think that maybe, maybe. I mean, I
 13 think that's at the very high end, but you'd
 14 know. At that point you'd probably know,
 15 right, because that's a fairly high force.
 16 Q. You would know that you're doing
 17 something wrong you're saying?
 18 A. Well, you'd know that it's not easy to
 19 open. That's what I would say.
 20 Q. You'd pass -- you'd pass by the two
 21 finger close to don't do that force open at
 22 75 pounds? You'd agree with that?
 23 A. Yeah. I think, I think when you hit 75
 24 or more you would recognize that now you're,

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1 I would call -- I would call that forcing it
 2 open at 75 pounds.
 3 Q. Okay. Sorry, I'm looking for my
 4 document. While we're on the force issue
 5 here, I want to just kind of clarify what
 6 we're talking about as far as force and where
 7 it's applied.
 8 Do you see this exhibit?
 9 A. I do.
 10 Q. Okay. It is -- it's one of your
 11 photographs that I drew some nice pretty red
 12 lines on. And I don't know what photograph
 13 it was. I think it is -- whoops, my bad. I
 14 think it's your photo that ends 287.
 15 A. Okay. I can do a quick check on that.
 16 MR. CALLAHAN: And this is going
 17 to be Exhibit No. 10.
 18 (Exhibit Rondinone-10 was marked
 19 for identification.)
 20 THE WITNESS: Yeah, I think it's
 21 just a cropped version of that photograph.
 22 You just cropped it.
 23 BY MR. CALLAHAN:
 24 Q. Yeah. I might have not intentionally,

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1 but just so it's clear, I drew a red line
 2 down roughly near the center of the lid. I'm
 3 not going to -- I'm not going to -- I didn't
 4 measure it, I eyeballed it, but would you
 5 agree that's roughly the center at least for
 6 our purposes?
 7 A. Yeah, I would say that that's a good
 8 ballpark.
 9 Q. Okay. And we're talking about a hundred
 10 pounds, the UL standard for, well, the test
 11 from Section 9 of UL 136. That is a hundred
 12 pounds of force at the edge of the rim.
 13 That's out here where the longer line is;
 14 right?
 15 A. I think it's actually at the edge of the
 16 farthest point of the lid which would be at
 17 the end of the handle which is a little
 18 further than how you've drawn your arrow.
 19 Q. Okay. It's at the edge of the fin?
 20 A. Yeah, I think that's fair.
 21 Q. Okay. Let's talk about the handle. I
 22 mean, there is nothing out here on the edge
 23 of the pot to grab onto; right? Most people
 24 grab it and try to open it with the handle;

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1 correct?

2 A. I don't know about most people. Because
3 the way this is designed, you could very
4 easily pinch the ears with the base, the ears
5 on the base, and you can use, you can just
6 use a squishing, pinching motion with your
7 hands to open or close it, so that's what the
8 ears allow you to do. So you could easily
9 apply force at the edge of the ears. That's
10 actually very easy to do with this design.

11 Q. So you think the ears are a design flaw
12 or could be?

13 A. Well, I would, I would say that the ears
14 allow you to apply force at the very edge
15 which means you can use a smaller force to
16 open it. I don't know if I would rate it as
17 a flaw or not because I haven't really
18 thought about that, but it certainly allows
19 the user and you should anticipate a user
20 being able to use that to apply force. I
21 mean, it's clearly, it's clearly there and
22 it's clearly adjacent to the ears on the
23 bottom of the base.

24 Q. When the lid, when the lid is closed the

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1 ears overlap with the handles; right?

2 A. Yeah, but that's, that's exactly why
3 it's easy to pinch because then you can grab
4 one part of your hand on the ear and the
5 other part of your hand on the base and
6 squeeze your hand together and be able to
7 apply force right to the end. You can do a
8 decent size force out there.

9 Q. What's decent size force pinching with
10 your fingers?

11 A. Oh, I don't know, you can probably get
12 maybe 10 pounds with each hand and you could
13 do both hands simultaneously. Maybe you
14 could do a little bit more, but not much, not
15 much more. I don't think you could get 50
16 pounds.

17 Q. Okay.

18 A. I think maybe, maybe Schwarzenegger
19 could back in the day.

20 Q. Popeye with giant forearms maybe,
21 something like that?

22 A. Yeah, Popeye probably could. I don't
23 know that I could.

24 Q. Okay. Well, there is a handle on this

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1 unit; right?

2 A. Yes.

3 Q. And if you twist on the handle you're,
4 you're losing some mechanical advantage as
5 opposed to applying force at the edge of the
6 rim -- at the edge of the lid; correct?

7 A. That's true.

8 Q. Okay. How -- do you know how -- what's
9 the diameter of the lid? Do you know? Is it
10 about 10 inches?

11 A. You know what, I think out to the edge
12 of the ears it's like, I want to say it's
13 about a foot, but I don't -- I haven't
14 memorized that. I'd have to look at it, but
15 I think 10 inches to a foot is a -- would be
16 a good estimate for the total diameter.

17 Q. Okay. And how about to the edge of the
18 handle in the inside part where this red line
19 is?

20 A. The inside of the handle I think is
21 about half that, maybe a little more, but,
22 you know, ballpark.

23 Q. Okay. So, again I mean we could get a,
24 we could grab a lid and do an actual

146

1 measurement, but just estimate, using these
2 estimates you'd agree that a hundred pounds
3 of force applied at the long line, you'd need
4 almost 200 pounds of force at this, at this
5 point on the short line to be equivalent;
6 right?

7 A. Yeah. I mean, the way they're drawn I'd
8 say that's a good ballpark.

9 Q. Okay. So if you use the handle to try
10 to open it, it kind of limits the amount of
11 force that one human can apply to the open
12 lid; right?

13 A. Yeah, but when we, we've done testing
14 with not this pressure cooker but with a
15 number of similar design cookers, and without
16 a sufficient interlock at about 4 psi
17 grabbing the handle you can open the lid
18 typically, like not just grabbing at the
19 ears, but going at the handle. So the 4 psi,
20 that's where we get the 4 psi from.

21 Q. Okay. But that's not an Instant Pot
22 product?

23 A. No, but in terms of its functionality
24 and the resistance without the interlock I

147

1 think it's very similar.

2 Q. All right. Here is my -- here is my
3 point I'm trying to get to here. Do you
4 think that the handle which limits the
5 mechanical advantage of the user is a
6 positive safety feature?

7 A. I don't know that I would rate the
8 design of this lid as positive and negative.
9 It has the handle and it has the ears, so you
10 can't make the argument that the presence of
11 the handle limits the operator's force,
12 because it doesn't, right. There is
13 absolutely nothing that prevents the user
14 from using the ears that are designed on it
15 to do that, so I would say you can't make
16 that claim is what I'm saying.

17 Q. All right. Even though the ears you can
18 only access with your fingers, the lid you
19 can use full force of your arm?

20 A. Correct. Correct, but I found that
21 having the ears and being able to pinch is
22 sometimes a way to get a nice -- a better
23 torque applied.

24 Q. I'm bringing up a couple more exhibits.

148

1 Bear with me.

2 Okay. Would you agree that the
3 Instant Pot product in the Durham case is a
4 durable design?

5 A. It appears to be. Yeah, I would say
6 that it does appear to be a durable design.

7 Q. During your examination did you see any
8 signs it was damaged or abused?

9 A. I did see signs of damage. I believe
10 that the inner pot had a dent and I believe
11 that the lid had evidence of heat exposure.

12 Q. Well, let's talk about the lid quickly
13 and then we're going to go through this more
14 detailed. The heat exposure is not heat from
15 steam; right?

16 A. No, that appears to be external heat
17 exposure.

18 Q. Okay.

19 A. Not from this device.

20 Q. Yeah. The steam from the unit can't
21 melt the plastic on the lid?

22 A. Not at any of the pressures I think it
23 would operate at, no.

24 Q. Okay. You mentioned the dent on the

149

1 lid.

2 A. On the pot.

3 Q. On the pot, sorry, my mistake.

4 MR. CALLAHAN: This is going to be
5 Exhibit No. 11. It's 156.

6 (Exhibit Rondinone-11 was marked
7 for identification.)

8 BY MR. CALLAHAN:

9 Q. It's one of your photographs. That's
10 the dent you're talking about?

11 A. Yes.

12 Q. And there is another view of the same
13 dent. I'm going to mark that as No. 12.
14 It's 169. It's a picture of measuring or
15 demonstrating the depth of the dent; right?

16 A. Yeah, yes.

17 (Exhibit Rondinone-12 was marked
18 for identification.)

19 BY MR. CALLAHAN:

20 Q. What caused the dent?

21 A. I don't know.

22 Q. You have no explanation?

23 A. Well, I can't say what caused this dent.

24 It's my experience that a pot like this with

150

1 a dent of this geometry would typically be
2 caused by an impact either from say shipping
3 or dropping or hitting it with a hammer. I
4 mean, those are all things that could do it.
5 It appears to be an impact style dent.

6 Q. All right. When the unit is shipped
7 this inner pot is in the base unit; right?

8 A. Usually. I mean, that's how I would do
9 it.

10 Q. That's how Instant Pot does it, too,
11 isn't it?

12 A. I believe when they're new the pot is
13 inside the base and the base is inside a
14 Styrofoam frame which is then inside a
15 cardboard box.

16 Q. Okay. And it would be -- I mean, do you
17 have an explanation as to how the dent would
18 occur during shipping and not damage the
19 base?

20 A. Oh, I think the only way it would occur
21 during shipping is if it were not packaged
22 with the OEM packaging.

23 Q. Oh, okay. Do you have any estimate of
24 how much force would be required to cause

151

1 that dent?

2 A. You know, I haven't measured that force,

3 but the wall thickness of the pot is very

4 thin, so it wouldn't be a lot of force. It's

5 not a high force event.

6 Q. All right. Well, it also, it's at a

7 corner, too; right?

8 A. It is, yes.

9 Q. Which gives a little more stability.

10 It's a three-dimensional curve or shape?

11 A. No. Only when you're right at the base.

12 As soon as you get up the wall a little bit,

13 it's not that much help. You can actually

14 see the deformation is not at the base. You

15 see how it primarily is farther from the

16 base, so that's what I'm pointing to.

17 Q. Could that dent have been caused by

18 someone dropping the pot?

19 A. It could be.

20 Q. Could that dent have been caused by

21 someone dropping the pot while full of

22 liquid?

23 A. Yeah, I think, I think that could

24 happen.

152

1 Q. Okay. If you drop a pot full of liquid,

2 what happens?

3 A. It depends on how it falls and how much

4 liquid is in there. The liquid could stay

5 in. The liquid could spill out.

6 Q. All right. I'm kind of curious. You

7 measured the depth, but there is no reference

8 to it in your report. Why is that?

9 A. Because I don't know how the dent

10 occurred.

11 Q. I'm going to skip over that one. Sorry.

12 This is your Photograph 230.

13 A. Yes.

14 MR. CALLAHAN: We're up to Exhibit

15 13.

16 (Exhibit Rondinone-13 was marked

17 for identification.)

18 BY MR. CALLAHAN:

19 Q. What does this show?

20 A. Actually, I'm trying to remember where

21 that came from. I think that is, I want to

22 say that's part of the base. That's the

23 handle or edge or ear of the base below the

24 lid.

153

1 Q. All right. Maybe that will help you,

2 Exhibit 238.

3 A. Yeah, that's a -- that's a good

4 description of where it is. It's attached to

5 the base. It's sort of the handle ear

6 section.

7 Q. The handle broke; right?

8 A. Yeah, it looks like there is a fracture

9 of the plastic.

10 Q. All right. The handle isn't referenced.

11 The broken handle isn't referenced in your

12 report anywhere, is it?

13 A. That's correct.

14 Q. Any explanation for that how that

15 occurred?

16 A. No, I don't know what caused that to

17 break off.

18 Q. Any measurement of or any estimate of

19 the force required to break that handle off?

20 A. You know, I haven't, I haven't tried to

21 make that measurement. It would depend upon

22 the aging of the plastic and whether or not

23 there was a defect in the plastic to come up

24 with that source. No, I haven't measured

154

1 that.

2 Q. Could this broken handle have been

3 caused by the pot being dropped?

4 A. I think it could be. It definitely

5 appears to be. I was just going to say it

6 definitely appears to be an impact style of

7 failure.

8 Q. Based on the fracture point?

9 A. Based on, yeah, yes, exactly, based on

10 review of the fracture.

11 Q. Could this type of damage have been

12 caused by the pot tipping over on a counter?

13 A. You mean just falling from upright to

14 sideways on a counter?

15 Q. Yes.

16 A. I don't think so. You'd have to give me

17 a -- you'd have to show me a hypothetical

18 where that would be realistic. I don't think

19 that that distance would be sufficient.

20 Maybe falling to the floor or maybe during

21 shipping again without the OEM packaging.

22 Q. Unlikely to have occurred during

23 shipping with the original product packaging

24 from the store?

155

1 A. Yeah, barring some kind of defect in the
2 plastic, like unless it's already got some
3 kind of large pre-crack, I would say yes,
4 that's true.

5 Q. Could this handle have been broken off
6 by something being dropped on the pot?

7 A. I guess if it's heavy enough that's
8 possible. I guess that is possible, yeah.

9 Q. And if something was dropped on the pot
10 while it had liquid in it, what would happen
11 to the liquid?

12 A. Well, to break this handle what would
13 probably happen is the handle would fracture
14 and the liquid would just kind of slosh
15 around but not come out if something was
16 dropped on the handle.

17 Q. All right. Well, if you can say sloshed
18 around, it could come out if it's sloshing
19 around depending on how hot it is; right?

20 A. I mean, if it's all the way up to the
21 top maybe, but usually when something drops
22 on a piece of plastic like this to cause the
23 fracture, the fracture in an impact like that
24 is immediate meaning that as soon as that

156

1 force breaks the lid -- the handle, it no
2 longer applies any type of force to tip over
3 the, the unit. So to me, to me it seems like
4 it's unlikely something falling on the handle
5 would cause the contents to come out in any
6 significant fashion.

7 Q. All right. But not impossible, it's
8 just unlikely?

9 A. It's not impossible, but I'd say it's
10 extremely unlikely.

11 Q. How about some, something stuck in that
12 little slot and like leveraged off the
13 handle, could that have occurred?

14 A. Yeah, I guess you could do that. You
15 could put like a screwdriver or a crowbar in
16 there or something. I guess you could, but
17 you'd have to -- you'd have to impact it,
18 meaning you'd have to put it in and pound on
19 the tool basically. I think that, I think
20 that could cause it.

21 Q. How about if the lid was set into that
22 little slot, could you push on the lid and
23 break it off?

24 A. I -- like maybe using -- I don't -- I

157

1 don't know what part of the lid would fit,
2 like if the ear, if the ear of the lid fits,
3 which I'm not sure that it does, but if it
4 did I'd bet you'd break the ear first then
5 before your break the handle just because the
6 ear is thinner, has, has a lower resistance
7 to bending. That seems unlikely. It seems
8 unlikely to use the handle as a bending tool.

9 Q. How about something like a kitchen
10 utensil like a wooden spoon or something,
11 could that be put in there and break it off?

12 A. If it's a strong enough wooden spoon, I
13 mean, I've seen wooden spoons that I don't
14 think could do it. Maybe like a heavy metal,
15 metal tool, like a heavy metal ladle or
16 something. I don't know, maybe a metal tool.
17 I guess a wooden tool if it's strong enough
18 could do it.

19 MR. CALLAHAN: All right. This is
20 a picture of the lid. It's 276. This will
21 be 15. And I think the next one is also the
22 lid. Yeah, here is another picture of the
23 lid. This is 278. This will be 16.

24 (Exhibits Rondinone-15 and

158

1 Rondinone-16 were marked for identification.)
2 BY MR. CALLAHAN:

3 Q. These two pictures show heat damage to
4 the lid; right?

5 A. I agree.

6 Q. And you don't know when this occurred?

7 A. No. There isn't -- there is no way to
8 know.

9 Q. Was the sealing ring or the -- yeah, the
10 sealing ring inside the lid, was that also
11 damaged by heat?

12 A. Not significantly, because I believe
13 this lid could still seal. You know, in our
14 testing I think this is the lid we used. I
15 know that we used an exemplar weight,
16 pressure release weight valve, but I think
17 the rest of it sealed. So I don't think that
18 this was functionally detrimental. Even
19 though it looks pretty bad, I think it still
20 works.

21 Q. Well, that's my question. You tested
22 the unit. The inner pot was dented, the
23 handle was broken off, the lid was melted,
24 and it still operated safely during your

159

1 test?

2 A. That's true.

3 Q. It functioned exactly as intended even
4 notwithstanding all that damage?

5 A. I agree with that.

6 Q. In Section 2 of your report, and maybe
7 I'll bring that up so we can look at it.

8 Section 2 you offered a conclusion that the
9 float valve is exposed to potential clogging
10 from food, despite the fact that Instant Pot
11 has used pressure protective -- has used
12 protective screens in other pressure cooker
13 models.

14 A. Yes.

15 Q. That's your opinion in this case; right?

16 A. Yes.

17 Q. Can you quantify this potential in any
18 way?

19 A. Um, no, I don't think -- I don't think I
20 could statistically quantify that.

21 Q. So this potential causing -- clogging
22 could occur one in every hundred uses or one
23 in every hundred thousand uses or one in
24 every hundred million uses?

160

1 A. I mean, I wouldn't put a number on it.
2 I'd say that I personally have seen cases
3 where the description provided by the
4 witnesses indicate clogging of the valve from
5 food, and I've seen that more than once on
6 Instant Pot cases. So, you know, I don't
7 think it's like one in a hundred thousand or
8 one in a million, but I couldn't give you a
9 number, a specific number.

10 Q. Well, what's the description that leads
11 you to conclude it might have been clogging
12 of the valve?

13 A. Well, because the valve, the physics
14 clearly dictates that the valve's exposure to
15 the cooking, to the cooking food will allow
16 the potential for the food to clog. I mean,
17 it's exactly why Instant Pot is using a
18 shield on its pressure release, because they
19 don't want food to be entrained and they
20 don't want food to get into the valve and
21 they don't want food gumming up the seal or
22 hitting the feet or any of that.

23 And Instant Pot uses a shield for
24 this exact float valve on other products, but

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1 the fact that there is no shield, there is no
2 protection, means that you are exposing it to
3 the food which can clog it.

4 Q. My question was, what descriptions of
5 incidents suggest a valve close -- a valve
6 clogging?

7 A. Oh, well, so this, this description of
8 this incident is a very good example, right.
9 We have an incident that's described as the
10 pressurized release of contents which can
11 only happen if it's under pressure while the
12 unit is being opened by hand.

13 The interlock mechanism on this
14 pot in my opinion is sufficient to prevent
15 the unit opening under pressure that would
16 eject contents, which means that in order for
17 the description of the pressurized release of
18 contents to occur, this valve has to be
19 clogged in a position that doesn't interface
20 with the interlock.

21 And by not interfacing with the
22 interlock, it will allow a user to open it
23 when the pressure is fairly low, meaning I
24 believe most likely around 2 psi, because the

162

1 description does not describe an event with
2 extensive release of contents. It sounds
3 like the release of contents is actually
4 fairly small. None of the food actually
5 comes out, only liquid in the description,
6 and to me that indicates a fairly low, about
7 2 psi pressure release I'd just say based on
8 my experience, and that to me indicates that
9 you had to have had a clogged float valve,
10 because the clogged float valve would allow a
11 user to open it without the benefit of the
12 interlock, and it will allow it to hold
13 pressure even if the valve appears to be in
14 the bottom position, the lower position.

15 Q. Okay. So is it your opinion that
16 because she was able to get it open the valve
17 had to be clogged?

18 A. In order for her to have gotten it -- in
19 order for her to have been able to get it
20 open and have a described pressurized release
21 of contents, then I think in this case the
22 valve has to be clogged, yes.

23 Q. Any other basis for your opinion the
24 valve was clogged?

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1 A. With the -- with the evidence in this
2 case, no. I would say that's it. I have had
3 other Instant Pot cases where the
4 descriptions are very similar to this where
5 the user is describing the capacity to open
6 the lid when, when the unit is under
7 pressure. And in those cases I believe, at
8 least in some of them, the interlocks were
9 functioning, which means it can only happen
10 with a clogged valve to get a pressurized
11 release, so this isn't the only time I've
12 seen that. I think that's it.

13 Q. Have you written a report in any other
14 Instant brand case where you said the float
15 valve was clogged?

16 A. I don't know.

17 Q. Okay. So let me see if I, let me see if
18 I understand. So you have -- I'm trying to
19 bring a couple of answers together in one
20 place if I can.

21 So the reason you believe the
22 float valve was clogged or was clogged is the
23 user was able to open it, there was an
24 ejection of contents, the ejection was small,

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1 and I guess throw in there the locking
2 mechanism is more than sufficient to prevent
3 her from opening it under pressure?

4 A. Yes.

5 Q. Okay.

6 A. And I would also add from one of the
7 earlier answers that we do know that, that
8 you can potentially clog it, right. So you
9 put all of those pieces lined up together and
10 you get this opinion.

11 Q. Okay. No other basis?

12 A. I think we've covered everything.

13 Q. Okay. Can you rank these supporting
14 bases in order of importance to your opinion?

15 A. No. I'd say that you'd probably have to
16 have all of them, right. You'd have to have
17 an interlock that, that's not interlocking,
18 meaning the float valve is in the down
19 position. You have to have a clog to hold
20 the pressure while the float valve is in the
21 down position. You'd have to have a user
22 apply a turning motion to open the lid.
23 You'd have to have the pressurized ejection
24 of contents. I'd just say you have to have

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1 them all. I think they're all necessary.

2 Q. Okay. So if a jury disbelieves any one
3 of them or a judge disbelieves any one of
4 them, your opinion has no support, at least
5 scientific support as you've defined it?

6 A. If you make an assumption that any of
7 those things are not present, then I guess
8 you don't get the pressurized release of
9 contents, I guess. I think that's what the
10 result would be.

11 Q. Okay. If, if the float valve -- well,
12 let me say it this way. If the lid is fully
13 closed, the float valve is not blocked from
14 rising or falling; correct?

15 A. Okay.

16 Q. True?

17 A. Well, if we make the assumption that
18 it's not clogged then that's true.

19 Q. All right. Well, what happens under
20 normal operating conditions to the float
21 valve?

22 A. Under normal --

23 Q. If there is contents in it, what
24 happens?

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1 A. Under normal operating conditions if the
2 lid is fully closed the unit will start to
3 build pressure. It will build sufficient
4 pressure to raise the float valve to its up
5 position and then it will continue to build
6 pressure to operating pressure.

7 Q. Okay. How long does it take for the
8 float valve to rise?

9 A. That depends on the thermal mass of the
10 contents and probably also the ambient
11 temperature and the temperature of the
12 contents when they're put in, but, you know,
13 it's in the minutes range. It's not in the
14 seconds range. It's not in the hours range.

15 Q. Okay. So minutes?

16 A. Yeah, I believe so.

17 Q. What's that?

18 A. Yes. Yes, I agree minutes.

19 Q. And during this time the contents are
20 heating; correct?

21 A. Yes.

22 Q. So for some of these units the contents
23 are relatively cool, they're not cooking yet;
24 right?

167

1 A. As soon as the power is applied to the
2 heating element the contents will start to
3 raise in temperature.

4 Q. All right. The cook cycle starts or the
5 countdown starts when the unit is
6 pressurized, well, when the unit reaches
7 pressure, cooking pressure; right?

8 A. Yes, for pressurized cooking I believe
9 that is true.

10 Q. Okay. And when the float valve is up,
11 is it susceptible to clogging?

12 A. Is there a question?

13 Q. Oh, you didn't hear me?

14 A. Well, you said and the float valve is
15 susceptible to clogging and that sounded like
16 a statement to me.

17 Q. I'm sorry, maybe we cut off with Zoom.
18 If the float valve is in the up position, is
19 it susceptible to clogging?

20 A. You could still clog it in the up
21 position, but I believe that -- I guess it's
22 possible. I guess it's possible, but if it
23 was clogged in the up position it will still
24 function as an interlock device.

168

1 Q. Define what do you mean? How could it
2 clog in the up position?

3 A. If the float valve is raised to the up
4 position and then later in the cooking
5 process the food had clogged the -- and I
6 guess in this case it's more like stuck the
7 valve, right. The food has come over the
8 bottom of the float valve and has kind of
9 clogged its position, meaning it stuck its
10 position. I would consider that a clog even
11 though it's in the up position, but if it's
12 in the up position when that happens then I
13 don't think you could open, a user could open
14 it with manual force.

15 Q. Okay. So if the float valve rises and
16 is stuck in the up position, that's a safe
17 position in this product?

18 A. Yes, I agree.

19 MR. CALLAHAN: Okay. Whoops, I
20 almost pressed leave. This is going to be
21 marked Exhibit 17.

22 (Exhibit Rondinone-17 was marked
23 for identification.)

24 BY MR. CALLAHAN:

169

1 Q. It's a document. It's one of your
2 photos marked valve, Float Valve B. Do you
3 have that in front of you or visible?

4 A. I do see it. Yes, I do see that.

5 Q. Okay. I just want to be sure I
6 understand your opinion here. This is the,
7 this is the float valve in a down position;
8 right?

9 A. Yes.

10 Q. And it's your opinion that basically
11 food rose up from the bottom into this space
12 here, clogged the orifice and clogged the two
13 bypass holes?

14 A. Yes, and also the act of pressurizing
15 will then push the float valve to capture
16 what food is present in there, so yes, you're
17 essentially right. The blue arrows indicate
18 at least approximately the motion of the
19 product to cause the clog.

20 Q. All right. And for your clogging to
21 occur the entire circumference of the orifice
22 has to be clogged; correct?

23 A. Yes.

24 Q. And both bypass holes need to be

170

1 clogged; correct?

2 A. Yes, or the food has to get into the
3 cylinder just past the bypass holes, but yes.

4 Q. All right. Or I guess the entire, the
5 entire bore through the cylinder could be
6 clogged as well; right?

7 A. I mean that's possible, yes.

8 Q. Any more or less possible than your
9 general clogging scenario?

10 A. No. I mean, I wouldn't -- I wouldn't
11 statistically quantify any of those.

12 Q. Okay. When the float valve is in the up
13 position the food can't pass the silicon seal
14 to get up in the orifice; correct?

15 A. No. If the float valve is in the up
16 position, the food will either go on top of
17 that elastomeric seal or the food can act as
18 a stiction between that elastomeric seal and
19 the bottom of that outer cylinder assembly
20 through which the valve moves up and down.

21 Q. Is it your opinion that the float valve
22 must be blocked down for this clogging theory
23 to occur?

24 A. In order for the theory that I've

171

1 expressed in my opinions to occur I believe
 2 that the float valve is clogged while in the
 3 down position, and I believe that that can
 4 occur in a more easy fashion because if the
 5 lid is closed nearly all the way but not all
 6 the way, the unit will cook and the slider
 7 will prevent the float valve from coming up
 8 all the way, but it will allow it to come up
 9 a short distance, and it's in that position
 10 where it's still in the down position, the
 11 nonlocked position, where the clogging can
 12 then allow a user to open the unit while it's
 13 still under pressure.
 14 Q. I'm sorry, my phone rang and distracted
 15 me. I'm not sure you answered my question.
 16 Is it necessary that the -- for your
 17 hypothetical clogging scenario to occur, is
 18 it necessary that the float valve be blocked
 19 down?
 20 A. It has to be blocked in the down
 21 position in order for a person to be able to
 22 apply a manual force to open under pressure.
 23 Q. So if the lid is fully closed your
 24 theoretical valve blocking cannot occur?

172

1 A. No, you can still block it in the down
 2 position. The food would then be the -- the
 3 food blocking would then be providing the
 4 down position maintenance.
 5 Q. All right.
 6 A. I just think it's easier if you have the
 7 help of the slider.
 8 Q. Because if it's fully closed you only
 9 have a few minutes to block it before the
 10 float valve rises; right?
 11 A. That's true. I'd say that's fair.
 12 Q. And is it your opinion that this total
 13 circumphral clogging and filling the bore can
 14 occur in the first few minutes during that
 15 temp --
 16 A. I believe it could. Yes, I believe that
 17 it could, although I think it's more likely
 18 that the lid was not quite fully closed and
 19 that allowed the slider to assist in keeping
 20 the float valve in the down position, but I
 21 believe it could occur either way.
 22 Q. And what's more likely than the other?
 23 A. I believe it's more likely that the lid
 24 was nearly fully closed but not fully closed.

173

1 Q. Can you quantify the risk of the float
 2 valve being blocked in the down position
 3 while fully closed, while the lid is fully
 4 closed?
 5 A. I would not -- I would not put a
 6 statistical quantity on that.
 7 Q. Because you cannot?
 8 A. I cannot.
 9 Q. And you can't put a statistical quantity
 10 on when it's blocked down either because you
 11 cannot?
 12 A. That's true. I have not done sufficient
 13 testing to evaluate either of those
 14 quantities.
 15 Q. The float valve, is it important that
 16 the user inspect it regularly?
 17 A. I mean, I would. I think that you do
 18 want to make sure that it moves freely.
 19 Q. You wouldn't clean it?
 20 A. Well, to a certain extent. I don't know
 21 how many users would take it apart and clean
 22 it and put it back together. I think that
 23 might be beyond most user's ability, but I
 24 think you'd at least want to do an external

174

1 cleaning of it.
 2 Q. How do you clean it? How do you take it
 3 apart?
 4 A. Most of these float valves allow you to
 5 take off the elastomeric endpiece and then
 6 pull it from, from above.
 7 Q. So you pop the little white piece off
 8 and it falls out?
 9 A. Yeah, for most of them that's how you do
 10 it.
 11 Q. And that's how this one, this one is
 12 too; right?
 13 A. I believe that's how this one functions
 14 as well.
 15 Q. And there are -- you don't know?
 16 A. I don't recall trying to take the
 17 elastomeric end off of this particular float
 18 valve, but that's my understanding of almost
 19 every one I've ever seen. They'd be that
 20 exact way.
 21 Q. Did Mr. King take it off?
 22 A. I don't recall.
 23 Q. Did you see a photograph of him taking
 24 it off?

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1 A. Possibly. I haven't memorized every
2 photograph I have. Would you like me to look
3 through? I'd be happy to do so now.

4 Q. I'm not sure that's necessary. I think
5 the photographs speak for themselves.

6 A. I would agree with that.

7 Q. If the float valve was covered by a
8 protective screen, is it more likely or less
9 likely that a user would check the float
10 valve and clean it?

11 A. Um, I think if the user were given
12 specific instructions on how to remove the
13 gate -- the guard and then clean it, I don't
14 think it would be any less likely. And in
15 fact, a lot of the cookers that have the full
16 baffle underneath the lid, that full baffle
17 is meant to be taken off and cleaned which
18 would then expose this exact mechanism that
19 we're seeing just like this. So, no, I don't
20 think it would be less likely that they would
21 clean it.

22 Q. Sorry, I'm grabbing a couple of
23 pictures.

24 MR. KRESS: Dennis, for planning

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1 purposes, how much do you think you have
2 left?

3 MR. CALLAHAN: Two and a half
4 hours, three hours maybe.

5 MR. KRESS: All right.

6 MR. CALLAHAN: Do you want to take
7 a break?

8 MR. KRESS: Yeah, we'll be taking
9 a few breaks.

10 MR. CALLAHAN: All right,
11 whatever. Let me know.

12 THE VIDEOGRAPHER: Do you want to
13 do a break now?

14 MR. KRESS: Yep.

15 THE VIDEOGRAPHER: All right. Off
16 the record, 4:30.

17 (Recess; 4:30 p.m.)

18 - - -

19 (Resumed; 4:39 p.m.)

20 THE VIDEOGRAPHER: We're back on
21 the record.

22 BY MR. CALLAHAN:

23 Q. Okay. I'm sharing. I already marked
24 this. Sorry, my bad. The inspection notes

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1 which were previously marked as Exhibit 3, do
2 you see that in front of you?

3 A. I do.

4 Q. All right. I want to talk about these
5 lid position measurements down here.

6 First of all, you didn't take
7 these measurements, did you?

8 A. I think Derek King was the one who
9 recorded them. I might have -- I can't
10 remember if I was present when they were
11 taken or not, but I have seen the
12 measurements. I think he was the one who
13 recorded them.

14 Q. And how do those measurements relate to
15 this photograph, Exhibit 402?

16 A. So -- yeah, so you can see the
17 measurements marked. I'm going to pull up my
18 note file. Yeah, so you can see how there
19 are arrows at the 0.5 centimeter, 1.4-ish,
20 it's like 1.35 or something, just between 3
21 and 4, just over 2, about 2.1 centimeters and
22 then at 2.8 centimeters. Those arrows I
23 believe are indications of the marks that are
24 showed at the, at the lid positions that are

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1 measured in the note file.

2 So you can see when you slide the
3 lid slightly the slider is fully retracted.

4 If you slide it further, you can see the
5 slider starts moving due to the interaction
6 of the flange at 1.4. If you slide it
7 further -- so we're starting at the closed
8 position and then you're moving away. As you
9 applied it farther from the closed position
10 towards open, at 2.1 centimeters the slider
11 now obstructs the float valve, and then at
12 2.8 centimeters the magnetic switch engages
13 the detection of the lid now being detected
14 at the not fully closed position. That's
15 essentially what that means.

16 MR. CALLAHAN: Okay. First of
17 all, this photograph, Exhibit -- I've marked
18 it as, actually it's going to be 18. Sorry,
19 and the exhibit number ends 402.

20 (Exhibit Rondinone-18 was marked
21 for identification.)

22 BY MR. CALLAHAN:

23 Q. This is one of your -- this is a
24 Berkeley Engineering photograph; correct?

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1 A. It sure looks like it. What was the
2 number on it, 402?
3 Q. 402.
4 A. Yeah, that's exact, yeah. Yes, it is
5 one of ours, yes.
6 Q. Okay. And this shows the lid in a fully
7 closed position; right?
8 A. Yeah, this is a closed position
9 orientation.
10 Q. Okay. So this is the top piece up here
11 is the lid and it bumps up against the stop
12 here on this lower lip; right?
13 A. Yes. That is against the stop, yes.
14 Q. All right. And the first little arrow
15 means what?
16 A. So the first arrow is where it starts.
17 It's up against the side.
18 Q. Okay. What do you use to measure it in
19 the lid?
20 A. You can see there is a mark on the
21 outside of the lid, it's just like a circular
22 mark, just the edge of that mark.
23 Q. All right. That's the -- is that the
24 hole for the --

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1 A. No, I believe the slider is somewhere
2 else. It's not visible in the photograph.
3 If we look at --
4 Q. Okay.
5 A. Yeah, I'm looking at, hold on -- well,
6 that might be where it's coming out. Let me
7 flip through my photos. It is, it is about
8 the right size and orientation and it's in
9 about the right place. Yeah, no, I think
10 that is where. I think that is where the pin
11 exists for the slider. I'm going to say
12 that -- you see that metal section? Yeah,
13 when you zoomed in you could see it. That's
14 a much better view. You see when you zoom in
15 you can see the metal reflection on the end
16 of the pin?
17 Q. Yes.
18 A. Yeah, so that's what we're looking at.
19 And the marks on the, on the ruler at the
20 bottom are at the edge of the circle, not
21 the -- not the pin it itself.
22 Q. Okay.
23 A. Yes.
24 Q. So this first mark, that's fully closed?

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1 A. Yep.
2 Q. Then at 1.4 this slider begins to move
3 meaning what?
4 A. Yeah. So at that point the slider is
5 engaging the flange that is not visible but
6 it's on the base unit, and that's forcing the
7 slider radially outward. So that's where the
8 slider starts to move and that's part of the
9 interlock mechanism. The moving of that
10 slider is what would be prevented if the
11 float valve were up.
12 Q. Okay. And then 2.1 is what?
13 A. 2.1 is the slider has now moved far
14 enough that the slot in the slider is no
15 longer aligned with the float valve and it
16 would prevent the float valve from, from
17 rising.
18 Q. All right. So anywhere between .5 and
19 2.1 is essentially closed; correct?
20 A. That's right.
21 Q. There is no, there is no difference
22 between .6 and 1.6. From the pot's
23 perspective it's going to function the same;
24 correct?

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1 A. Yeah, I think that's fair.
2 Q. The magnetic sensor will sense the lid
3 is in a proper position. The float valve is
4 unrestricted and will rise and pressurize;
5 right?
6 A. Yes, that's correct.
7 Q. Okay. So earlier when we were talking
8 about, well, maybe the user will bounce the
9 lid off the stop, they've got to bounce the
10 lid off the stop all the way back out to this
11 2.1 mark to make a difference; right?
12 A. Yeah, it would have to move about one
13 and a half centimeters.
14 Q. All right. And then this difference
15 between 2.1 and 2.8, this is the range you
16 say that it senses the lid's position but the
17 float valve is still blocked?
18 A. Yes.
19 Q. Okay. And the blocking of the float
20 valve is by design; correct?
21 A. Not at this position it isn't, because
22 it's only by design when the lid thinks that
23 it's not fully closed. This is not by
24 design. What you're looking at here is

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1 something that the electronics believe it's
 2 fully closed when in fact it is not and it
 3 will not function if fully closed properly.
 4 Q. Okay. When is the lock engaged?
 5 A. What do you mean?
 6 Q. Well, if the -- never mind. Strike
 7 that. I'll ask a different question.
 8 MR. CALLAHAN: I'm going to move
 9 to the next picture, 403, and I'll mark this
 10 as No. 19, Exhibit 19 for the deposition.
 11 (Exhibit Rondinone-19 was marked
 12 for identification.)
 13 BY MR. CALLAHAN:
 14 Q. This is the other end of the tape?
 15 A. Yes.
 16 Q. What do these numbers represent?
 17 A. They're the last three entries in that
 18 text file. 6.9 just before 7, that's where
 19 the slider is still fully obscuring the float
 20 valve. 7.9 just before 8 is where the float
 21 valve is barely obstructed, meaning at that
 22 point the float valve will not rise, and then
 23 8.4 is all the way, is all the way open as
 24 far as it will go.

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1 Q. Okay. In all these positions if the lid
 2 is only turned that, that much, the unit is
 3 not heating; right?
 4 A. In all of these positions the unit will
 5 not heat.
 6 Q. All right. So basically anywhere from
 7 2.8 out to 8 and a half, the unit is not
 8 heating at all?
 9 A. That's true.
 10 Q. So it's your opinion that Ms. Durham
 11 left the lid in this gap between 2.1 and 2.8?
 12 A. I think that's the more likely of the
 13 two scenarios, yes.
 14 Q. Can you quantify the chance that a user
 15 will leave the lid in this intermediate
 16 position between 2.1 and 2.8?
 17 A. No. And I just want to say that I think
 18 you've already asked me statistical questions
 19 maybe 20 times or so, and the answer is
 20 always going to be the same, and I'll just
 21 say it very clearly. I have not done
 22 statistical analysis on this. I have not
 23 done the required, you know, hundreds or
 24 thousands of tests that would be necessary to

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1 perform that statistical analysis, and so I
 2 do not have quantitative numbers for the
 3 statistical results for any of these, right.
 4 I haven't done statistical analysis or the
 5 sufficient work necessary to do that.
 6 Q. All right. So you can't tell me if the
 7 user, you know, the lid is going to be left
 8 in this position one in a thousand times, one
 9 in a hundred thousand times? You have no
 10 estimate at all?
 11 A. I don't have a value for that. No
 12 matter how many times you ask that the answer
 13 is always going to be the same. I have not
 14 done the statistical analysis.
 15 Q. And that's because that number is just
 16 unknown to you; right?
 17 A. It's because the amount of work
 18 necessary to do that whether it's hundreds or
 19 thousands of tests, and it might be thousands
 20 to do the statistical analysis properly, you
 21 just have to know that it can happen. You
 22 need to treat it as a risk as such, period.
 23 If you want to treat it as non-risk or a low
 24 risk, then you would have to do the

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1 statistical study.
 2 Q. Again, my question is the risk is
 3 unknown to you sitting here today in the
 4 deposition?
 5 A. And my answer is the exact same. The
 6 risk is known because it is present. The
 7 number or the value of the risk, a
 8 statistical number is not known without doing
 9 the testing.
 10 And in order to assume that the
 11 risk is a small value, you need to do the
 12 statistical testing because you have to prove
 13 it's a small value. If all you want to do is
 14 assume that it's possible and therefore a
 15 risk, period, end of story, you do not have
 16 to do the statistical testing.
 17 So for my opinion, you don't have
 18 to do the statistical testing because I'm not
 19 trying to demonstrate the number of the --
 20 the value number of the risk, but if Instant
 21 Pot or if somebody wants to claim that this
 22 risk is insignificant then they have to do
 23 the statistical study to demonstrate that,
 24 period. And that will be the same no matter

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1 how many times you ask the question. My
2 answer is still the exact same.

3 Q. Ms. Durham testified that the lid was
4 fully closed, did she not?

5 A. I believe that she stated that the lid
6 was closed or certainly that she believed
7 that the lid was closed.

8 Q. Do you accept that testimony?

9 A. Well, I mean, I know she didn't measure
10 it, but I do believe that she believes the
11 lid was closed.

12 Q. That's not my question. Do you accept
13 her testimony that it was closed?

14 A. You know, her testimony is what it is.
15 It's my opinion that most likely it was
16 nearly fully closed but not fully closed.

17 Q. So you reject her testimony?

18 A. No. You seem to think, and you've asked
19 this many, like three times in a row now, she
20 didn't measure the exact position of the lid
21 and the description of closed to me could be
22 anywhere in this range. Anywhere in this
23 range in my opinion the machine thinks it's
24 fully closed, and therefore I would call it

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1 fully closed even though there is a 2.8 to
2 0.5 centimeter range there that we've
3 identified.

4 So you can't, you can't say that
5 I'm disregarding her testimony, right,
6 because that's kind of like saying that the
7 machine is being disregarded as being fully
8 closed, right. I'm just saying that I
9 believe that she believes that it was fully
10 closed.

11 Now, does that mean up against the
12 stop or does that mean somewhere in this 2
13 centimeter range, I don't know, but I'm not
14 throwing out her testimony and saying that
15 she's wrong. I'm just saying that, yeah, she
16 believed it was fully closed.

17 Q. But her testimony is not that she
18 believed it was closed. She testified she
19 checked the marking on the front of the lid,
20 it was centered, and the fins lined up with
21 the handles. That's her testimony, isn't it?

22 A. So why -- why don't you read me her
23 testimony then so we can just not have any
24 more guesswork on that. Why don't we just do

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1 that and sort of skip all of this back and
2 forth. I think we'll save time.

3 (Pause.)

4 Q. Okay. This is Ms. Durham's testimony
5 from Page 143. Right there, 143?

6 A. Okay.

7 Q. You reviewed her deposition; correct?

8 A. Yeah, I believe you already showed us
9 that she believes it's counterclockwise to
10 close, which by the way I do believe is
11 incorrect.

12 Q. Okay. I asked her. Actually I think I
13 got it wrong.

14 A. And that's possible. Yeah, it's
15 possible your question was wrong and she
16 agreed with you.

17 Q. Yeah, at some other point. Yeah, I had
18 my lefty-loosey, right-tighty thing all
19 backwards. Her answer was when I asked her
20 do you turn it until it stops or is it some
21 other point, she says, "It will stop. It
22 will -- when it closes and locks it will
23 stop. The lid handles -- well, the lid fins
24 will meet up with the handle, well, on the

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1 pot."

2 You know, what she's referring to,
3 right? We talked about the fins before?

4 A. Yeah, exactly. And because the pot
5 handles are much wider than the fins, it
6 could -- it could be in the not fully closed
7 position and still be lined up.

8 Q. And I again ask her, "And do you
9 remember on the incident that you turned the
10 lid all the way so it stopped?" Her answer
11 was, "Yes," not I believe I did, she said yes
12 unequivocally; right?

13 A. No, no, she definitely said yes, but
14 that's, but that's clearly her belief, right.
15 Every answer, every one of these answers was
16 yes, that's what I believe what it was,
17 right, every single one. She doesn't -- I'm
18 sure she, what she's stating there she
19 believes is absolutely true.

20 Q. Isn't that true of your testimony as
21 well?

22 A. I'm sorry, what?

23 Q. Isn't that true of your testimony as
24 well?

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1 A. I think that's true of everybody's -- I
2 think that's true of everybody's testimony,
3 and I think that her description of, you
4 know, when it closes and the lid fins meet
5 up, right, and, and it locks to a stop,
6 right, that doesn't mean that it was exactly
7 up against the stop. It doesn't mean that
8 there is only one millimeter position where
9 it could be. It means that she observed that
10 the fins appeared to be lined up.

11 And she, I don't think she
12 measured any of it. Were the fins in the
13 dead center? Who knows. You know, was
14 the -- was the lid all the way up against the
15 stop? Who knows? That's not what she's
16 saying. What she's saying is that through
17 your question, do you remember you turned it
18 all the way, she's like, yeah, but that's, to
19 me that doesn't say it was only in absolutely
20 one position, couldn't be a millimeter off.
21 That's not what it says to me.

22 Q. Okay. But a millimeter off is
23 essentially closed according to, according to
24 you; right?

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1 A. What I'm saying is it doesn't say how
2 far it's off. It could be a millimeter. It
3 could be 10 millimeters. It could be 15. I
4 don't know. She didn't measure it.

5 Now, am I saying that it had to be
6 partially opened? No, I'm not. It could be
7 closed all the way and it could be clogged in
8 the down position as we already discussed and
9 I already answered in detail, and that's also
10 possible, but I think it's also possible and
11 in my opinion more likely that it wasn't
12 closed all the way because it's easier to
13 achieve the clog in that position, but it
14 could have been closed all the way. I'm not
15 discounting that. I'm just saying that I
16 believe more likely it would probably be not
17 quite fully closed.

18 Q. I asked her another time about whether
19 it was closed and she described, "Well, it
20 will. The handle -- the handle flaps and the
21 handles will meet. And did that happen, did
22 the handle and handle flaps meet," and her
23 answer was, "Yes." That's in Page 135 of her
24 deposition.

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1 A. Okay.

2 Q. Again, she's essentially saying it's
3 closed, right, fully closed?

4 A. That's right, just like the machine says
5 it's closed when it's not fully closed,
6 right. Your machine, Instant Pot's machine
7 says the unit is fully closed at the 2.8
8 centimeter mark, okay, and that just means
9 that it's in that range of fully closed.

10 So when I read this I'm not
11 reading this as, yes, I measured it, this is
12 exactly where it was. It simply means that,
13 yes, that's the approximate position because
14 I think that's all you can testify to.

15 Q. Under your hypothesis the float valve
16 gets clogged, how long does it take to clog?

17 A. I don't have a number for that.

18 Q. Minutes, hours, seconds, what?

19 A. I don't have a number for that. I don't
20 think it's hours. I think it would be on the
21 order of minutes, but even then I wouldn't
22 give you a number.

23 Q. You can't put a range on it?

24 A. Nope.

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1 Q. That's not important for your opinion?

2 A. Nope.

3 Q. What pressure can it reach when it was
4 clogged?

5 A. When it's clogged you could probably run
6 to operating pressure if it's clogged nicely.

7 Q. Probably?

8 A. Yeah. Well, like I said, I haven't done
9 the statistical testing on it. I can't tell
10 you how often and how much, but if it's
11 clogged it will hold pressure.

12 Q. Do you know how much pressure?

13 A. I have not measured that.

14 Q. What happens if the unit doesn't reach
15 operating pressure during its cooking cycle?

16 A. I think if it doesn't reach operating
17 pressure it probably will just continue to
18 cook or attempt to cook. I don't know at
19 what point it gives up.

20 Q. Will it begin the countdown?

21 A. I think the countdown usually starts
22 when a specified pressure is met. Whether
23 that's the full pressure or not, I haven't
24 seen the algorithm, but I believe it would

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1 have to be at least approaching the full
 2 pressure in order for the countdown to start.
 3 Q. Your experience was -- you can't answer
 4 my question based upon your experience on
 5 this unit?
 6 A. Well, yeah, because the operating
 7 pressure is not a fixed value. There is
 8 oscillation at the operating pressure and so,
 9 you know, because I don't have the exact
 10 number of which the countdown starts I can't
 11 give you the exact number, but I believe it's
 12 in that range of the operating pressure.
 13 Q. Did Ms. Durham testify that the cook
 14 cycle was unusual in any way?
 15 A. I don't think so.
 16 Q. Did she recall that the countdown
 17 started?
 18 A. I don't recall her exact words, but it
 19 was my understanding that, that she believed
 20 that it went through the full cook cycle
 21 which would imply that the countdown had
 22 started and ended.
 23 Q. Well, she testified to certain events
 24 that occurred during the cook cycle; right?

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1 It's not just her opinion?
 2 A. No, no, no. Her testimony speaks for
 3 itself. I one hundred percent agree with
 4 that.
 5 Q. Is a normal cook cycle consistent with
 6 your hypothetical clogging?
 7 A. Yeah, it could be.
 8 Q. It could not be as well; right?
 9 A. Well, I mean, you can have a full cook
 10 cycle with clogging, end of story. Yes, you
 11 can do it.
 12 Q. If you have clogging, does the float
 13 valve pop up?
 14 A. If the clog is sufficient to hold the
 15 float valve down, then no. If the clog
 16 occurs when the lid is not fully closed, then
 17 no. So those are the two conditions at which
 18 the float will stay in the down position, but
 19 I guess you could have it come up. You know,
 20 I wouldn't rule that out, but sufficient
 21 clogging will prevent it from rising.
 22 Q. Okay. If it rises the unit is locked;
 23 right?
 24 A. That's true. Assuming that it can rise

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1 all the way, that is true.
 2 Q. Do you recall what Ms. Durham said about
 3 the float valve on the day of the incident?
 4 A. Yes. I believe that she, that she
 5 stated that she observed it in what she
 6 believed was the up position.
 7 Q. This is Ms. Durham's testimony from Page
 8 151. I asked her, "On the day of the
 9 incident do you have a specific memory of the
 10 float valve popping up at some point in
 11 time?" And her answer was, "Well, yes, I
 12 remember seeing it." Right, that's her
 13 testimony?
 14 A. I completely agree. You are reading her
 15 testimony correctly.
 16 Q. That's pretty unequivocal. That's not I
 17 think, that's I remember seeing it; right?
 18 A. That's exactly what she says.
 19 Q. If she is correct, "I remember seeing
 20 the float valve pop up at some point in
 21 time," your hypothetical falls apart; right?
 22 A. Well, first of all, that's not what she
 23 said, right. You said, "Do you have a
 24 specific memory of the float valve popping

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1 up," and she says, "I remember seeing it."
 2 She does not say she remembers the float
 3 valve popping up. You do ask down below,
 4 "Okay." And she says, "I don't know exactly
 5 at what point, but I do remember seeing it
 6 come up."
 7 So to me that just means that it
 8 moved upwards some distance, right. She
 9 didn't measure it. We don't know if it was
 10 fully up or if it only came up a millimeter,
 11 right. It may have just moved a little bit
 12 and she thought, well, it's moved a little
 13 bit, that's good enough. Right, we don't
 14 have any measurements here.
 15 And what really matters is that,
 16 you know, her testimony is all approximate,
 17 right. This is remembering something that
 18 happened a great deal of time before the
 19 testimony was given, and every one of her
 20 answers is approximate. I mean, she agreed
 21 with you that it was counterclockwise and we
 22 know that that's not right. I think she had
 23 some other thing about, you know, some volume
 24 estimate, how big is a can of Coke, and she

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1 was off by like a factor of two. She wasn't
 2 even close, but that's okay because they're
 3 all approximate.
 4 All of her testimony is
 5 approximate, and that you really have to --
 6 you have to read it. And if you're
 7 suggesting that, well, I'm going to read this
 8 as if it were measured exactly, then in my
 9 opinion that's not how you -- you can't do it
 10 that way. You can't do it. You have to read
 11 it as it's all approximate, every, every
 12 single answer.

13 Q. Is it your testimony that without
 14 measurements you can't recall things
 15 specifically?

16 A. It is my experience that giving specific
 17 answers that are very tight and accurate is
 18 very hard to do, especially when a great deal
 19 of time has passed, however, giving
 20 approximate answers I think is generally
 21 pretty good.

22 So, for example, if she says it
 23 opened when it was -- and then fluid jetted
 24 out and the lid popped up, those are all

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1 approximate answers. That's not saying what
 2 pressure it was at. That's not saying how
 3 much fluid came out. That's just saying
 4 that, look, in an approximate sense this is
 5 the description.

6 Just like here in an approximate
 7 sense, was it closed, yeah, it was
 8 approximately closed. Right, nobody measured
 9 it. Did the float valve came up? Yeah, it
 10 came up, but it's an approximate sense,
 11 right. It may have came up a little. It may
 12 have come up a lot. And you just have to,
 13 you have to read them as approximate. You
 14 can't read them as exact values.

15 Q. How far up does the float valve have to
 16 go to interfere with the slider and prevent
 17 opening?

18 A. I think that total travel distance is,
 19 I'm going to ballpark it at a little under a
 20 centimeter, but it's in that, you know, 5 to
 21 10 millimeter range.

22 Q. You never measured it?

23 A. I don't recall measuring it. I don't
 24 recall.

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1 Q. And what's your testimony worth if you
 2 haven't measured it?

3 A. It's only approximate, isn't it, that's
 4 exactly right. Right, this is a perfect --
 5 you're giving a perfect example, right. I'm
 6 giving you an approximate answer. I don't
 7 know the exact number. I'd have to go
 8 measure it. That's perfect. Thanks, that's
 9 perfect. I agree 100 percent.

10 Q. Is this the only time she testified
 11 about the float valve coming up, by the way,
 12 do you remember?

13 A. No, I think it might have come up more
 14 than once. I don't recall, but --

15 Q. In any of her other testimony did she
 16 say something, I guess, I approximate, I
 17 don't know, maybe?

18 A. I don't think she ever used the word
 19 "approximate."

20 Q. Okay.

21 A. I don't recall her using that.

22 Q. Let's turn to Page 139 of her
 23 deposition. I asked her, "That silver
 24 button, that silver float valve, was that

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1 you" -- "was that loose? Was that sliding
 2 properly the day you used the pot, the day of
 3 the incident?" Her answer was, "Yes."

4 "It was working properly as far as
 5 you know?"

6 "Yes."

7 "Okay. And it did pop up; right?"

8 "Yes."

9 "Well, let me ask a better
 10 question. When you first put the lid on was
 11 it down?"

12 "Right. And after pressure --"

13 "And did it pop up?"

14 "Yes, yes."

15 She's not saying it moved a
 16 little, she said it popped up, didn't she?

17 A. Yeah, but she didn't say how far. Why
 18 would you assume that it's the full distance?

19 Q. Why would you assume it's not?

20 A. I'm just saying it's approximate, and
 21 remember --

22 Q. Why do you assume it's approximate?

23 A. Let me finish my answer, please. I
 24 appreciate it.

203

1 MR. KRESS: Yeah.

2 BY MR. CALLAHAN:

3 Q. Okay.

4 A. You know, so remember that even if the
5 float valve did pop up and a clog occurred
6 later on which would allow it at some point
7 to be jammed -- I mean, it would have to come
8 downward at some point in order for her to
9 open it.

10 So even if it did pop up at some
11 point, in order for her to open it against
12 the slider it needs to have gone down to a
13 lower position, period, at the time of
14 opening. And at the time of opening, in
15 order for it to release pressurized contents,
16 it has to be under pressure which means it
17 has to be clogged, end of story, end of
18 story.

19 So whether if it did pop up all
20 the way at some point, and I mean all the way
21 and it was fully closed and it engaged the
22 interlock, then at some point it must have
23 come down and then, and then clogged in the
24 lower position. Now, do I think that's

204

1 likely, no, and I do I think that my scenario
2 is also consistent with her testimony, yes,
3 because we don't know how far it popped up
4 and you're saying I assume it popped up all
5 the way, and I am saying you can't assume
6 that. Nobody measured it. We don't know how
7 far it popped up.

8 Q. You said that the valve could have
9 popped up and then later went down?

10 A. What I'm saying is that if the valve had
11 popped up at some point, the only way for
12 this event to occur as described is for the
13 valve to release downward below the slider
14 but still be clogged in order to prevent the
15 exhaust of pressure.

16 Q. How does that occur?

17 A. That's the only thing that's consistent.
18 Say what?

19 Q. How does that occur?

20 A. Well --

21 Q. Describe the --

22 MR. KRESS: Dennis, please let him
23 finish his answer.

24 THE WITNESS: Yeah. So, you know,

205

1 as long as there is a clog present in the
2 down position it will hold pressure. In
3 order for her description of a pressurized
4 event to occur, it had to have held pressure
5 while she was able to turn the lid which can
6 only occur in the down position. I don't
7 know exactly what bit of food got where or
8 when it got there, I don't have those
9 answers, but I can tell you that in order for
10 the pressurized event to occur and for her to
11 be able to open it and for the pressurized
12 contents to be released, it had to have been
13 clogged in the down position.

14 Now, I've already say this, but my
15 opinion is that most likely it was in the
16 down position the entire time and her
17 recollection of how far it popped up just
18 means it didn't pop up all the way. That's
19 still my opinion, but it could have happened
20 in another way as long as a clog is present
21 at the time that she is turning the lid and
22 the float valve is in the down position.

23 Q. You testified your opinion, what -- you
24 testified to another hypothetical here, that

206

1 the float valve could have popped up and then
2 fallen down and then clogged in the down
3 position, isn't that what you just said?

4 A. No, that was your hypothetical. You
5 said give me a hypothetical where this can
6 happen and that was the hypothetical I gave
7 you. My opinion is still the same as it's
8 been.

9 Q. Can I ask my question? I'm trying to
10 get my question out.

11 A. Okay. Well, I thought I answered your
12 question, but go ahead.

13 Q. No, you did not.

14 If the float valve pops up under
15 pressure, right, and that's the only way it
16 would pop up; correct?

17 A. So you're starting your hypothetical.
18 Please continue.

19 Q. If the float valve pops up, how does the
20 float valve drop down again until the press
21 -- before the pressure is released?

22 A. It will not drop down before the
23 pressure is released below about 1/2 to 1
24 psi.

207

1 Q. Okay. So if she sees the float valve
2 pop up and we assume it popped up fully, your
3 hypo -- the unit cannot clog; correct?
4 A. The unit cannot clog at that point. If
5 the pressure is released say to 1/2 to 1 psi
6 and the float valve popped down, but it's
7 still -- there is still a clog present,
8 meaning there is still food, the food could
9 clog the float valve, if you have any type of
10 trapped pressure inside the food itself it
11 can be released and the pressure can go back
12 up slightly, not to full operating pressure,
13 but it will come back a little bit, then you
14 can still be clogged and have a low pressure
15 event which is what I think this is. In that
16 hypothetical making the assumptions that
17 you're forcing me to make, yes.
18 Q. So it's your opinion that the float
19 valve can drop and then the pressure could
20 rise up to 2 psi after that?
21 A. So it is my opinion that in your
22 hypothetical if the float valve drops and is
23 clogged at the moment of dropping and there
24 is pressure -- and the food itself has

208

1 trapped vapor, which can occur. I'm not
2 saying it has to occur, in fact I don't think
3 it is very likely, but you -- you know,
4 Exponent has done a lot of work that has
5 demonstrated you can have pressure trapped in
6 the food, then that pressure can be released
7 into the vapor space and increase the vapor
8 space pressure to a higher than the value of
9 the 1/2 to 1. Now, exactly what it is, you
10 know, I can't tell you. I didn't measure
11 that.
12 But I'm just telling you that in
13 your hypothetical, which I believe is not a
14 very likely hypothetical, you can still get
15 the pressure to rise after it drops, but I
16 think that we're talking about sort of an
17 extremely unlikely hypothetical.
18 Q. Well, not that unlikely. She says
19 that's what happened?
20 A. That's not what she said what happened.
21 That's your assumption of her -- of the
22 interpretation of her words.
23 Q. It's your opinion that the float valve
24 should have been protected by a screen or

209

1 some sort of anti-block shield?
2 A. Yeah, or a baffle, yes.
3 Q. And would that have prevented the
4 incident?
5 A. I believe it would, yes.
6 Q. Can clogging still occur with a baffle
7 in place?
8 A. It's my opinion -- well, I mean anything
9 is possible, but it's my opinion that the
10 likelihood of clogging would be much, much
11 lower. It would heavily mitigate this. You
12 could never guarantee it of course 100
13 percent, but you could definitely mitigate
14 the risk.
15 Q. And you can't quantify that mitigation,
16 can you?
17 A. I cannot, just like -- just like I've
18 said many times before, but I'll be happy to
19 say it again.
20 Q. And if the unit could clog with a
21 protective screen in place, is it still
22 defective?
23 A. I think if the effort had been made and
24 demonstrated that the addition of that screen

210

1 mitigates the likelihood of a clog, then I
2 think you've done your job. And Instant Pot
3 has used screens over the float, over the
4 float valve, so we know they think it's safe,
5 right. They've sold products with that and
6 other companies have sold the full baffles
7 which I think are even better.
8 Q. I asked you it before, but I'm going to
9 ask you again here. You don't recall writing
10 a report stating that another Instant Pot is
11 defective because it lacks this float valve
12 protector; correct?
13 MR. KRESS: Objection; asked and
14 answered.
15 THE WITNESS: Yeah, that is still
16 -- that is still true. That's still true,
17 yes.
18 BY MR. CALLAHAN:
19 Q. Well, would you agree that you have to
20 examine every incident to determine the cause
21 of the occurrence?
22 A. I have no idea what that question is.
23 About every incident that ever occurred ever?
24 I don't know. What are you talking about?

211

1 Q. No, no, no. I'm sorry. I'll try to
2 restate a better question.

3 It's not your opinion that every
4 incident involving an Instant Pot is caused
5 by a lack of a valve protector; correct?

6 A. No. In fact, I've had Instant Pot cases
7 where the lid interlock was not functioning
8 adequately. You could easily turn it by
9 hand.

10 Q. Okay. You'd agree that each incident is
11 different; right?

12 A. I would say that each incident will have
13 its own uniqueness, but a lot of them have a
14 lot of overlap.

15 Q. All right. Well, one thing you said in
16 this case was you had to look at the
17 description of the incident to figure out
18 what happened; right? That's a key part of
19 your case?

20 A. That's true.

21 Q. In your report you suggest that there
22 was prior testing that demonstrates that the
23 clogging of the float valve was possible;
24 right?

212

1 A. Yeah. I mean, we've clogged float
2 valves for other cases, not for this, just,
3 you know, as part of the testing we did, but
4 yeah, I know it can happen.

5 Q. Okay. You didn't do it in the Durham
6 case?

7 A. I did not do it specifically for this
8 case, that is correct.

9 Q. Do you recall the units you did test to
10 demonstrate?

11 A. No, I don't recall even the manufacturer
12 on those.

13 Q. And I called it a test. It's really a
14 demonstration that it's possible; right?

15 A. I mean, it is. It is a test, but it is
16 a demonstration.

17 Q. Okay. And do you recall exactly how you
18 made that demonstration? What did you do?

19 A. You know, we've done it multiple times,
20 but the one that comes to mind I think we
21 used potatoes. I think that was the food
22 that we used, but I know we've done it more
23 than once, but the one that I recall
24 specifically I think it was potatoes.

213

1 Q. When did you do that test with the
2 potatoes?

3 A. Oh, I don't know. It was years ago.

4 Q. You don't recall the model?

5 A. Nope.

6 Q. You've used the word "foreseeable."
7 What does that mean?

8 A. To me that means that the designer,
9 distributor, manufacturer, whoever is in that
10 chain would foresee that an operator would
11 perform a function in a certain way.

12 Q. You used foresee to define
13 foreseeability. Can you give me a better
14 definition?

15 A. Yeah. It means the, that that person
16 would -- should anticipate that it would be a
17 potential operation that a user would
18 perform.

19 Q. Is anything that's possible also
20 foreseeable?

21 A. I guess that's -- I guess you can never
22 answer 100 percent on that, but, you know,
23 for example, there are design features in
24 this like, for example, the slider which is

214

1 meant to prevent someone from opening it
2 under pressure, right. That's a foreseeable
3 misuse, right? They only had that slider
4 because they foresee that a user will not --
5 will do something that's contrary to the
6 instruction, and that's a good example of
7 what is foreseeable. And I think that a lot
8 of these pressure cookers have very good
9 descriptions of what foods not to cook, what
10 foods to be concerned with, and clearly
11 because they see the potential for clogging.
12 So, yeah, that's how I would say foreseeable
13 for this.

14 Q. Is it your opinion that it's a design
15 feature -- well, strike that. Is it your
16 opinion that a warning in the instruction
17 manual indicates that there is a foreseeable
18 misuse possible?

19 A. I suppose so. I mean, a warning is sort
20 of like that last ditch, that last ditch risk
21 mitigation device that you can use, but yeah,
22 I can't -- I can't see any other reason to
23 put the warning on there.

24 Q. So in your world, in your opinion the

215

1 product shouldn't have warnings, it all
2 should be designed in a way that warnings are
3 unnecessary?

4 A. No. In my world you'd only use warnings
5 when design features cannot be implemented.
6 If you'd like to have warnings in addition to
7 design features, that's totally fine with me.

8 Q. The testing you did with the potato or
9 the demonstration you did with the potato, is
10 your opinion based on that?

11 A. I mean, that's just one of the
12 experiences that I had that tells me that you
13 can achieve clogging, but the physics also
14 tells me that you can achieve clogging
15 without any testing.

16 Q. So if the testing didn't exist, would
17 you still be able to support your opinion?

18 A. Yeah. The physics clearly dictates that
19 clogging is possible.

20 Q. All right. Let's -- the test you did,
21 can you describe it?

22 A. No, I don't recall the details of it. I
23 believe we were using that as our food
24 product and we achieved a clog, but I

217

1 A. On that demonstration, yes.

2 Q. All right. Is there any other
3 demonstration you remember?

4 A. I don't know. We've done so many of
5 those I couldn't tell you.

6 Q. You can't remember any other one?

7 A. Well, there is a leafy vegetable one. I
8 think that was another one, too. I'm sure
9 there have been others, but those are the
10 ones that come to mind.

11 Q. And every one of them was a manual
12 clogging of the valve to clog it; correct?

13 A. For the demonstrations of clogging, they
14 were manually applied.

15 Q. I mean, that result didn't really
16 surprise you, did it?

17 A. I guess not, because if you can present
18 food in any form up to the valve then you
19 would expect a potential for clogging. So,
20 yeah, of course, I would expect that.

21 Q. Well, my point is if you stuffed the
22 valve with the potato, it would limit the
23 ability of vapor to pass through that
24 orifice; correct?

216

1 couldn't tell you exactly how the clog
2 occurred or how long it took or anything like
3 that.

4 Q. Didn't you stuff a potato into the valve
5 to clog it?

6 A. We did testing where we, where we
7 presented the food. I don't know if we
8 stuffed it into the valve. I don't think we
9 did that, but we did do testing where we
10 presented the food on the outside of it.
11 Yeah, that was some of the testing.

12 Q. You manually clogged the valve; right?

13 A. We have done that, yeah. Oh, yeah.
14 Yeah, I think we even manually clogged it
15 with other things, too, like maybe like leafy
16 vegetable stuff, too, as well.

17 Q. Is that foreseeable?

18 A. That someone would manually clog it?

19 Q. Yes.

20 A. No, I don't think that they would
21 foresee someone doing that.

22 Q. Okay. So the purpose of this
23 demonstration was to demonstrate that a clog
24 was possible?

218

1 A. Yeah, but we didn't always stuff.
2 Sometimes you could just put the food around
3 it and have -- and have it clog that way.
4 You didn't have to shove it inside the
5 cylinder.

6 Q. You don't remember the models you used?

7 A. Nope.

8 Q. Is the shape of the valve important for
9 your demonstration, for your testing?

10 A. Not really. None of these valves are
11 designed to be clog proof. I don't think you
12 can design a valve to be clog proof. That's
13 why Instant Pot and others have used shields
14 to protect the valves.

15 MR. CALLAHAN: This is going to be
16 Exhibit 20. It's Image 4992 is the name of
17 the file.

18 (Exhibit Rondinone-20 was marked
19 for identification.)

20 BY MR. CALLAHAN:

21 Q. Do you know what that is in the picture?

22 A. That looks like a float valve.

23 Q. Do you know from what product?

24 A. No, I can't identify it by sight.

219

1 Q. Do you know if it relates to -- is this
2 the valve you tested with the demonstration?

3 A. I don't know.

4 Q. The food clogging demonstration?

5 A. I don't know.

6 MR. KRESS: Dennis, where is that
7 from just for my benefit?

8 MR. CALLAHAN: I'm going to have
9 to get back to you on that. I forget which
10 picture is which.

11 MR. KRESS: Is this from this
12 case?

13 MR. CALLAHAN: No.

14 MR. KRESS: Are we going to stay
15 in the bounds of this case or are we doing a
16 comprehensive Instant Pot deposition today?

17 MR. CALLAHAN: I'm trying to ask
18 him if he can recognize the valve he tested
19 in a prior case. You haven't provided the
20 test. I'm presenting him with some valves
21 that may or may not be the valve he tested.

22 MR. KRESS: I just don't want to
23 get into a guessing game or a quiz. I want
24 to -- he can give his testimony related to

220

1 his opinions in this case, but if we're doing
2 a comprehensive Instant Pot consolidation,
3 that's something different entirely.

4 MR. CALLAHAN: I, I don't even
5 know how to answer that. I don't think
6 that's what I'm doing.

7 MR. KRESS: Okay.

8 MR. CALLAHAN: He said he tested
9 another model product. I'm presenting him
10 with the valves from other models to see if
11 he could recognize them.

12 MR. KRESS: And have I been
13 provided those pictures? I mean, I need some
14 proper identification on what this is. It's
15 sounding like a guessing game at this point.

16 MR. CALLAHAN: Well, I think the
17 answer is he couldn't recognize the other
18 picture. I'm just going to pull another one
19 and see if he can recognize this one.

20 MR. KRESS: I'm going to object to
21 relevance.

22 MR. CALLAHAN: Okay.

23 MR. KRESS: And lack of
24 foundation. I don't even know what this is.

221

1 This might not even be an Instant Pot for all
2 I know.

3 MR. CALLAHAN: I'll guarantee you
4 it's not. He said he never tested an Instant
5 Pot in his demonstration. He tested other
6 models.

7 MR. KRESS: So how is that
8 relevant to what we're talking about right
9 now?

10 MR. CALLAHAN: Because he is
11 justifying his opinion based on his test of
12 another model.

13 MR. KRESS: Based on his
14 collective experience, but again this is
15 becoming a quiz game.

16 MR. CALLAHAN: I'm entitled to
17 explore that.

18 MR. KRESS: You're entitled to
19 explore it within, within proper notice of
20 what you're producing here. I mean, if you
21 want to give him a representation, hey, did
22 you test this model of pressure cooker, fine,
23 but I'm not going to continue with a guessing
24 game.

222

1 MR. CALLAHAN: I'm asking if he
2 recognizes the valves from the other
3 products.

4 MR. KRESS: All right. Keep
5 going. I'll make my objections as necessary.

6 MR. CALLAHAN: This is Exhibit 21.
7 It's Photo P1120134.

8 (Exhibit Rondinone-21 was marked
9 for identification.)

10 BY MR. CALLAHAN:

11 Q. Can you recognize this, sir?

12 MR. KRESS: Object to relevance.
13 Go ahead.

14 THE WITNESS: I mean, it looks --
15 it looks like it's potentially a float valve.

16 BY MR. CALLAHAN:

17 Q. Do you know what, from what product?

18 A. Nope.

19 Q. Not from the Durham product, though,
20 right?

21 A. Okay. Are you seriously asking me if
22 this is taken from the subject that we've
23 looked at like four photos from that looks
24 completely different? Is that -- is that

223

1 your actual question?

2 Q. I'm just trying to address

3 Mr. Kress's -- I agree. That's not the

4 Durham float valve.

5 A. That's not what you -- that's not how

6 you asked, but the answer is of course it's

7 not the Durham float valve. It looks nothing

8 like it.

9 Q. Okay.

10 A. Right, but it does -- it is -- it does

11 appear to have a cylinder. It does appear to

12 have a seal and it does appear that it would

13 function for internal pressure, which means

14 it would be functionally identical, but I

15 can't tell you where it came from. I don't

16 even know the manufacturer of that one.

17 Q. Okay. Can you tell me -- can you tell

18 me if this is in the model product you used

19 for your potato demonstration?

20 A. I don't know.

21 Q. Okay. I showed you this picture before.

22 This is Float Valve B. I think it was

23 marked. Oh, it was marked as No. 17.

24 What was Ms. Durham cooking?

224

1 A. You know, you'd have to read her

2 deposition to get the exact contents, but I

3 believe it was chicken and vegetables and

4 water and maybe spices.

5 Q. No potatoes though; right?

6 A. Not that I'm aware of.

7 Q. All right. How deep was the contents in

8 the bottom of the pot?

9 A. I don't think she measured it, but I

10 think she said it was a few inches or

11 something to that effect.

12 Q. Okay. How far from the top of the

13 contents to the float valve shown in the

14 exhibit?

15 A. I don't think that was ever measured,

16 but, you know, we're probably talking about

17 based on her description four to six inches

18 maybe. You know, it's hard to say because

19 she didn't give a number, not a specific

20 number.

21 Q. Well, she said the contents were one or

22 two inches deep; right?

23 A. Yeah, but she didn't measure it, and she

24 said also said that a 12 can -- a 12-ounce

225

1 bottle of Coke is six ounces, so she could be

2 off by a factor of two easily.

3 Q. Do we have better evidence of how deep

4 it was?

5 A. No, nobody took measurements as far as I

6 know.

7 Q. All right. So are you going to accept

8 her testimony in this or not?

9 A. You know, I'm going to answer this the

10 same way I answered the last whatever, 10 or

11 20 questions where you asked about her

12 comments being approximate. All of her

13 comments are approximate. My opinion is her

14 testimony is her best recollection, but it

15 has to be taken as approximate, end of story.

16 Q. Okay. So the surface of the soup is

17 what, five to six inches away from the float

18 valve approximately?

19 A. Possibly, but she -- well, I mean, we

20 don't know. We don't know. Nobody measured

21 that. Maybe it was three inches, maybe it

22 was six inches, maybe it was two inches. She

23 didn't measure it. We don't know what the

24 measurement is.

226

1 Q. When you were examining the pot, did you

2 measure the width of the float valve, the rod

3 in the float valve?

4 A. I don't recall if we measured that or

5 not. We possibly did. It's like a quarter

6 inch give or take, but I don't, I don't

7 recall the measurements if we did it.

8 Q. Do you know how much space there is

9 between the float valve and the orifice it

10 passes through?

11 A. That's also in the neighborhood of a

12 quarter inch give or take, you know,

13 ballpark. No, I don't recall the

14 measurement.

15 Q. The gap between the shaft and the

16 orifice is how far?

17 A. I think that's a ballpark quarter inch,

18 but like I said, I'd have to -- I can look

19 through my -- if you'd like, I can look

20 through my photos if you'd like. Is this a

21 really important that you need a closer

22 number if I got it? It sounds like it is.

23 Why don't you give me a few moments and I'll

24 sit here silently and look through my photos.

227

1 Q. Okay.

2 A. Or stand here I should say.

3 (Pause.)

4 MR. KRESS: While we're waiting,

5 so just to revisit this, Dennis, we're

6 probably getting close to four hours,

7 correct?

8 MR. CALLAHAN: Yeah, that's

9 probably fair.

10 MR. KRESS: All right. Are you

11 going to be done before four hours?

12 MR. CALLAHAN: No.

13 THE WITNESS: Okay. I think I'm

14 ready to answer the question.

15 BY MR. CALLAHAN:

16 Q. Okay.

17 A. I would keep my ballpark at about a

18 quarter inch based upon photographs that show

19 measurements of other things, but we did not

20 specifically photograph the measurement of

21 that gap.

22 Q. Okay. This is what I was trying to ask.

23 I'm just going to show you a picture. I'm

24 trying to -- I'm trying to ask you the

228

1 difference between the space between the

2 float valve and the size, the size of the

3 orifice. Does that make sense from the

4 drawing?

5 A. You mean what the annular size is, the

6 annular gap?

7 Q. Yeah.

8 A. Between the cylinder of the float valve

9 and the outer assembly of the float valve?

10 Q. Correct.

11 A. Oh, yeah, we definitely didn't measure

12 that, but that's got to be like a millimeter

13 or something. That's pretty small.

14 Q. Okay. That's what I was asking. That's

15 why I knew it was not a quarter inch.

16 A. I see. You're right. That is much,

17 much smaller than a quarter inch.

18 Q. All right. Did you measure the bypass

19 hole in the valve?

20 A. I don't think we measured this one, but

21 that's probably on the order of a few

22 millimeters. That's fairly small.

23 Q. In the units, the units you used for

24 your demonstration, those other models, do

229

1 you know if they had a bypass hole?

2 A. I don't know.

3 Q. Do you know if it had any -- do you know

4 the size of those shafts or the size of the

5 orifice the shafts pass through?

6 A. I don't recall.

7 Q. Did you measure the cap?

8 A. I don't think we put a ruler on the cap

9 for this particular one.

10 Q. All right. The product, the food

11 particles that in your opinion can cause this

12 clogging, how big are they?

13 A. It depends on how many you have. The

14 bigger the particles the fewer you need. I

15 wouldn't put a number on it.

16 Q. You can't give me an estimate?

17 A. No.

18 Q. How do the particles get from the

19 surface of the liquid to the valve?

20 A. Well, if the water is actively boiling

21 then it can be entrained in the bubbling up.

22 It could be entrained in the vapor moving

23 through and around the vapor space. I guess

24 conceivably you could shake the unit. I

230

1 think more likely it's just from the

2 bubbling.

3 Q. So we're not talking big pieces of food;

4 right?

5 A. Well, I mean, not like inch across

6 pieces. Yeah, I mean, I guess you could

7 shake it up and get those pieces up there,

8 but I'm thinking much smaller than that.

9 Q. You're thinking particles that could be

10 carried in steam?

11 A. Or, no, they could be blown up by the

12 bubbling. If you've ever boiled something on

13 a stovetop without a cover, you can -- you

14 can -- you can see that the contents can be

15 thrown like a foot. I've seen that at least.

16 So, yeah, I'm talking about the bubbling, the

17 bubbling effect where you get a bursting of

18 the vapor from the liquid to the vapor phase.

19 Q. Again, we're talking small particles?

20 A. I wouldn't put a number on it. I mean,

21 I guess I did. I don't think we're talking

22 an inch across, but no, I wouldn't put a

23 number on it.

24 Q. So all you can tell me is less than an

231

1 inch?

2 A. Yep.

3 Q. In the photograph that's shown as Float
4 Valve B, this is the protector over the
5 pressure relief valve; correct?

6 A. That's correct.

7 Q. You'd agree the pressure relief valve is
8 always open even when the unit is
9 pressurized; right?

10 A. I mean, it depends on how you set the
11 little weight thing at the top.

12 Q. Okay. How big are the gaps in that
13 protective cage over the relief valve?

14 A. Oh, I think they're just on the order of
15 like -- I don't know. I don't think we
16 measured that in this case, but they're just
17 on the order of a millimeter or two. They're
18 pretty small.

19 Q. Okay.

20 A. But they're pretty long. They're like
21 half an inch long or something.

22 Q. The particles of food that you said
23 could be thrust up into the valve, are they
24 bigger or smaller than the orifice on the

232

1 protective cage?

2 A. I don't have a number for that.

3 Q. May be bigger, may be smaller?

4 A. Yeah.

5 Q. You don't know?

6 A. Yeah, I don't have a number.

7 Q. You've test -- you've suggested that the
8 manufacturer should, if the manufacturer
9 wants to disprove your theory it should
10 conduct a test to demonstrate this isn't
11 possible under real world conditions. Do you
12 remember that testimony?

13 A. No. I believe what I said was that if
14 you want to statistically say that something
15 can't happen or is not likely to happen, then
16 you need to do a statistical analysis. If
17 you want to say that something is possible,
18 then you don't need to do the statistical
19 analysis because you're not relying on
20 statistics.

21 Q. Okay. How would you do a statistical
22 analysis?

23 A. Well, I mean if you wanted to
24 demonstrate the likelihood or the possibility

233

1 of clogging and you intended on selling tens
2 or hundreds or thousands of units, then you
3 better have a very, very large statistical
4 test base in order to ensure that the risk
5 doesn't need to be mitigated, but I wouldn't
6 put a number on it.

7 I would have to know exactly how
8 many units they plan to sell and what they,
9 you know, what they recommend cooking in it
10 and all the different levels, and then you'd
11 have to build out a perimetric study for it.
12 I mean, you'd just have to -- you'd have to
13 do the work to set up the study.

14 Q. Can you describe that study? That's my
15 question.

16 A. Well, no, because I haven't been hired
17 to build that study, but I mean you'd have to
18 look at all the potential foods. You'd have
19 to look at the potential fill heights. You'd
20 have to look at the potential cooking
21 conditions. You know, you'd have to look at
22 whether or not it's been fully cleaned from
23 the previous round. You'd have to look at
24 all of that. Then you'd have to look at how

234

1 many units you intend to sell and you have to
2 line all of that up and then build a matrix,
3 a test matrix off of that, right. It's a lot
4 of work. You don't just sit down and say,
5 well, we'll test ten and we're done. That's
6 not how you do it.

7 Q. I'm asking you how you do it. That's my
8 question, very simple.

9 A. I've given you the answer. I've not
10 been hired to build that study and to build
11 that study is not something I can answer in
12 one minute in a deposition. I told you the
13 things, the parameters that you look at, and
14 then after laying those out you would
15 determine how to approach the study.

16 Q. Would you be capable of doing such a
17 study?

18 A. Yeah, if I was hired to do so.

19 Q. Would -- in your hypothetical clogging
20 scenario, would there be any physical
21 evidence left to indicate that the valve had
22 clogged after the event was over?

23 A. Not if it had been cleaned, no.

24 Q. Define clean.

235

1 A. I mean, even, even just the introduction
 2 of pressurized water from a tap would
 3 probably be enough to clear it.
 4 Q. What was the testimony about the unit
 5 being cleaned, do you remember?
 6 A. I don't know that anybody knows whether
 7 or not or how it was cleaned, but clearly it
 8 has been cleaned to some extent. I mean,
 9 look at these pictures. That's a clean
 10 metallic surface. I don't think -- I've seen
 11 them where they're not clean and they're
 12 gross. You know, the mold is growing on all
 13 the surfaces pretty much. That's not what we
 14 have here. This has been cleaned.
 15 Q. So I guess to clarify, you -- there is
 16 no physical evidence that you found
 17 indicating residue from a, from a valve clog?
 18 A. That's true.
 19 Q. Can you tell me if -- well, did you look
 20 inside the relief valve?
 21 A. I think only, only from outside, but you
 22 can see it's been cleaned. I mean, it's
 23 clear that it's been cleaned.
 24 Q. Again, the relief valve behind this

236

1 cage, did --
 2 A. Oh, I'm sorry, I misinterpreted. I
 3 thought you meant float valve. I don't
 4 recall if we took off the cage or not on this
 5 one. I just don't recall.
 6 Q. Is there any testimony that the user or
 7 someone else took the cage off and cleaned
 8 underneath the cage?
 9 A. I don't know if they did or not.
 10 Q. Did -- I think you testified you did not
 11 remove the float valve during your
 12 examination?
 13 A. Yeah, I don't recall the float valve
 14 being removed.
 15 Q. So you didn't take off the cap on the
 16 end of the float valve?
 17 A. I just, I don't -- I don't recall doing
 18 that at all for this case.
 19 Q. Why not?
 20 A. I didn't think that it was necessary.
 21 It's clear that it's been cleaned and I
 22 didn't see that it was necessary to take
 23 apart.
 24 Q. Was there any testimony that someone

237

1 cleaned the inside of that float valve, the
 2 center bore?
 3 A. That I don't know.
 4 Q. Did you check to see if there was any
 5 residue inside that center bore?
 6 A. Only looking through the holes from the
 7 outside. I don't think we look -- we took it
 8 apart to look on the inside.
 9 Q. All right. And this, this view that's
 10 up on the screen, Float Valve B, looks pretty
 11 clean, those holes; correct?
 12 A. It does look like it's been cleaned,
 13 that's correct.
 14 Q. You don't see any residue at all through
 15 those holes; right?
 16 A. I don't, no.
 17 Q. All right. But there is no testimony
 18 anybody cleaned inside that float valve;
 19 right?
 20 A. I don't know what the testimony is
 21 regarding the cleaning.
 22 Q. Okay. Would you expect that a user
 23 after an incident would take the valve apart,
 24 clean the inside and put it back together?

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1 A. That I don't know. I don't know. I
 2 would -- I mean, it's clear they cleaned it
 3 to some extent. I don't know to what extent
 4 they did so.
 5 Q. All right. I thought, I thought you
 6 testified earlier it was not foreseeable that
 7 a user would pull the float valve on a
 8 regular basis?
 9 A. No. I just said that I would probably
 10 do it to clean it, but I couldn't speak to
 11 everybody. I couldn't say that everybody
 12 would do that or even think of doing it.
 13 Q. So you can't tell me if there is any
 14 evidence of food debris inside that cylinder,
 15 the float valve cylinder?
 16 A. No, but the fact that it's been cleaned
 17 at all means that if -- whether you find --
 18 if you don't find residue, it just means you
 19 don't find residue. It doesn't mean there
 20 wasn't clogging. And remember the clogging
 21 doesn't have to go all the way in the
 22 cylinder either. It can be along the outside
 23 as well. So I'm just saying that it clearly
 24 has been cleaned to some extent, and the fact

239

1 that there is no residue really means that
 2 it's been cleaned. So I don't know how else
 3 to answer that.
 4 Q. Do you have an opinion as to where the
 5 clogging occurred?
 6 A. No, I have no specifics on the clogging.
 7 Q. Is it your opinion that this food debris
 8 completely sealed the valve or was it like
 9 partially blocked?
 10 A. It had to -- it had to have been at
 11 least -- it had to have been a sufficient
 12 seal to build in my opinion to operating
 13 pressure. Now, whether it was a perfect seal
 14 I couldn't tell you.
 15 Q. So what pressure did it achieve, do you
 16 know?
 17 A. I did not measure that pressure. I
 18 don't think anybody did.
 19 Q. And you don't have an opinion about it?
 20 A. I mean, if I had to ballpark it I think
 21 it's about a dozen psi, but on the day of the
 22 event I have no idea.
 23 Q. And you have an opinion -- do you have
 24 an opinion about the pressure when she opened

240

1 the unit in your hypothetical?
 2 A. Yeah, I've already answered that. I
 3 think it's going to be in the neighborhood of
 4 2 psi. I don't think it's going to be much
 5 higher than that based upon her description.
 6 It might be a tiny bit lower. I don't think
 7 it's below 1 psi.
 8 Q. What's your scientific basis for
 9 concluding 2 psi?
 10 A. Because we've opened a number of
 11 electronic pressure cookers that are about
 12 this size and just very similar to this
 13 geometry, and at 4 psi that's where you can
 14 open it, but you generally get a quite
 15 forceful expulsion of contents.
 16 At about 1 and a half psi the
 17 expulsion of contents has dropped to very
 18 little, so 2 psi in my opinion is probably as
 19 high as it could have been to get just a
 20 small expulsion of contents and also to make
 21 it easier to open, because at 4 psi it can be
 22 opened by hand but it takes quite a bit more
 23 force.
 24 Q. How much force is required to open it at

241

1 2 psi?
 2 A. I don't have a number for that, but it's
 3 much easier than 4 psi.
 4 Q. You can't give me an estimate?
 5 A. No, because we just did those by hand.
 6 We were doing hand openings which means we
 7 can't use a tool. You can't measure it.
 8 Q. Well, you could have used a tool, you
 9 just chose not to.
 10 A. Well, no. If you use a tool then you're
 11 not demonstrating it can be opened by hand.
 12 That defeats the purpose of the test.
 13 Q. You could quantify measurement. You
 14 could do two tests; right?
 15 A. Well, I guess you could. I could do
 16 twice the amount of work, but the purpose of
 17 the test was to demonstrate that it could be
 18 opened by hand without a tool.
 19 Q. But because you didn't measure it you're
 20 only estimating?
 21 A. That is always true. That is absolutely
 22 right.
 23 Q. Do you have an opinion as to how long or
 24 how fast the pressure will dissipate

242

1 following your hypothetical blockage?
 2 A. How do you mean, like at the end of the
 3 cooking cycle or --
 4 Q. Yes. I'm sorry, at the end of the cook
 5 cycle.
 6 A. Oh, that would depend on the thermal
 7 mass of the food. You know, if the thing is
 8 all the way full I think these things take an
 9 hour to naturally relieve the pressure. If
 10 it's just a tiny bit full it could be ten
 11 minutes give or take. It really just depends
 12 on what the thermal mass of the food is.
 13 Q. You're referring to under normal
 14 cooking, right. I'm asking you specifically
 15 in your scenario with the valve blocked, how
 16 long would it take?
 17 A. Well, it would be the same because under
 18 normal cooking the valve is closed which is
 19 the same function as having it clogged,
 20 right. Both are holding pressure.
 21 Q. And I guess that assumes it's a fully --
 22 it's fully clogged?
 23 A. Well, it's clogged sufficient to hold
 24 pressure. It could be that if it has a slow

243

1 leak then it would relieve pressure sooner
 2 and it would just, it would drop pressure.
 3 You know, maybe instead of taking an hour it
 4 might only take 20, 30 minutes. Instead of
 5 taking 10, 15 minutes, it might only take
 6 five, but all of those are assumptions that
 7 we don't have an answer to. Those are --
 8 those are just assumptions.

9 Q. Turning back to your report which was
 10 Exhibit 1, in the fourth paragraph of your
 11 conclusions you say, "The injury and event
 12 description are consistent with contents
 13 being forcefully sprayed out of the pressure
 14 cooker under pressure and are not consistent
 15 with the contents simply being spilled under
 16 gravity."

17 Can you explain that statement,
 18 please?

19 A. Sure. When you take into account the
 20 event description and the injuries together,
 21 meaning the whole lump, what you are
 22 presented with is a description that the
 23 contents were released under pressure. It's
 24 kind of sprayed as a hor -- it's explained as

244

1 like a horizontal spray I think and the
 2 ejection or popping off of the lid, those are
 3 all things that describe a unit that's under
 4 pressure.

5 And all of those things together,
 6 the descriptions of the injury, the
 7 descriptions of the event, how the contents
 8 are described as leaving the cooker, those
 9 are all consistent with a cooker under
 10 pressure.

11 And I've already just told you
 12 that we're talking about low pressure rather
 13 than something just spilling out due to
 14 gravity, right, because you can't get the
 15 horizontal spray due to, you know, gravity.
 16 You can't get the lid popping off due to
 17 gravity. Those are -- that's why when you
 18 take it as a whole, what we're talking about
 19 is a pressurized event and not a gravity
 20 event.

21 Q. Do you remember what Ms. Durham said
 22 about the lid opening?

23 A. I'm sorry, what? About when her opening
 24 of the lid you mean?

245

1 Q. Yeah.

2 A. Yeah, I think she said she was able to
 3 turn it open and then after initiating the
 4 turn the lid popped and ejected the contents,
 5 but not much in terms of contents.

6 Q. Did she measure anything in respect to
 7 the lid open?

8 A. Oh, no, I don't think she did.

9 Q. Okay. So her -- that's just her
 10 impression of what happened; right?

11 A. You are absolutely right. Right, she
 12 has no idea what force she applied. She has
 13 no idea how much of the contents came out.
 14 All we can get from her testimony like I said
 15 before are approximations, right.

16 She does describe the lid being
 17 forcefully popped off, but that's only
 18 approximation. She's not saying how far,
 19 which way, what was the pressure, none of
 20 that, how long did it take, none of that.
 21 It's just an approximation.

22 Same thing for the ejection of the
 23 contents. You know, she didn't say how much
 24 came out. She did say that no food came out,

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1 only liquid, so you can presume that we're
 2 not talking about a huge amount.

3 Also she didn't really describe a
 4 lot being on the counter or the floor, only
 5 that it got on her body and a little bit I
 6 think on her son, but yeah, those are all
 7 approximations. That's exactly how you have
 8 to read it. You have to read it as
 9 approximation.

10 Q. Did she testify she saw liquid coming
 11 out of the, out of the unit?

12 A. I don't know if she said she saw the
 13 liquid, but she described it as only being
 14 liquid and not food. I don't know what she
 15 saw.

16 Q. Well, you testified a few minutes ago
 17 that one of the indicators that this was a
 18 pressure release was the contents were
 19 sprayed horizontally?

20 A. Yeah, I think that was from her son, the
 21 other witness.

22 Q. Can you explain how her son -- well,
 23 where was her son standing at the time of the
 24 incident?

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1 A. You know, I think there were two
2 different descriptions. I think he said he
3 was between his mom and the pressure cooker
4 and I think she said he was hugging her, so
5 he would be adjacent to her, but not
6 necessarily between the pressure cooker and
7 her. So I don't -- I don't know where he was
8 exactly. I couldn't give you that.

9 Q. But he was not sprayed with the
10 contents, was he?

11 A. I think some got onto his clothing, but
12 I don't think he was burned.

13 Q. Where on his clothing?

14 A. I don't recall. I think she described
15 it as having got on his clothing and so she
16 was concerned about him, but I don't think
17 she ever -- I don't recall if she said
18 specifically how much and where on the
19 clothing it was.

20 Q. And Ms. Durham's injuries were where?

21 A. I believe it was the thigh, so the upper
22 leg and then the foot, maybe the lower leg,
23 maybe the shin. I, I think it's basically
24 leg, below the waist I think.

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1 Q. All below counter height; correct?

2 A. Um, or close to it. Yeah, I think that
3 she said the counter height was about waist
4 height, so yeah, I would say below that.

5 Q. Okay. Is it possible that the contents
6 spilled out, were ejected out onto the
7 counter and then ran off the counter onto her
8 legs?

9 A. I guess that's possible. You know, yes,
10 I guess, as long as they're forcefully
11 ejected under pressure perhaps. I mean, it
12 still has to reach her legs so there has got
13 to be some kind of side velocity, but I guess
14 that's possible.

15 Q. You can't exclude that certainly; right?

16 A. That's true.

17 Q. How would her injuries be different if
18 she spilled the contents on the counter and
19 the hot contents ran off the counter onto her
20 leg and her foot?

21 A. Well, if we make the assumption that
22 none of the description of a pressurized
23 event applies and then we make the assumption
24 that her body must basically be adjacent to

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1 the counter, you know, almost basically
2 touching because we're not going to have a
3 high side velocity if we're just doing a
4 gravity release and a spill, but you'd have
5 to be close. If you make those assumptions
6 then she could be burned below the waist, you
7 know, in these places.

8 Q. In a similar pattern to how she was in
9 fact burned?

10 A. Um, yeah, they could be similar.

11 Q. And there is no scientific way to tell
12 us whether the contents, if they were on the
13 counter because of an ejection or because of
14 a spill, if they ran off the end of the
15 counter on her leg and her foot, there is no
16 scientific way to tell what happened to the
17 contents before; right?

18 A. Well, no. I mean, so if the contents
19 are ejected under pressure their sideways
20 velocity would be much, much higher and she
21 wouldn't have to be basically with her, with
22 her waist up to the counter. She could be
23 many inches away and still get hit, whereas
24 if we're assuming a gravity only then we're

250

1 talking, then I think she has to be closer I
2 think because your sideways velocity is going
3 to be lower. So those would be, that would
4 be the only difference physically in terms of
5 how, you know, what you would expect and the
6 physics.

7 Q. Do you know how close she was to the
8 counter?

9 A. No, I don't think that was measured.

10 Q. All right. So you only have an
11 approximation?

12 A. I don't even know if we have an
13 approximation. I don't even know if she
14 described it in any way. I don't recall. I
15 don't recall her describing it.

16 Q. Okay. So that's an unknown, do you
17 agree?

18 A. Oh, I agree.

19 Q. Do you know where the pot was located on
20 the counter?

21 A. I don't think that was measured either.

22 Q. So that's an unknown?

23 A. Its exact position is certainly unknown.

24 Q. And we talked a little bit about

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1 Newtonian physics at the beginning of the
 2 deposition. If the contents are sprayed out
 3 under pressure, 2 psi, they're going to
 4 expend outward and then gravity is going to
 5 start pulling them down; correct?
 6 A. That is absolutely correct.
 7 Q. And you can't tell me if there is enough
 8 sideways velocity to clear the counter;
 9 correct?
 10 A. When we release pressurized contents at
 11 about 2 psi, you could clearly clear a
 12 counter even if it was, you know, six to
 13 eight inches in, but it would start falling.
 14 So it wouldn't be -- it wouldn't still be at,
 15 you know, initial height by the time it got
 16 -- it cleared the counter. It would then
 17 start being at counter height or just above
 18 counter height.
 19 My experience on that is that
 20 under the lower pressure events, the sideways
 21 distance might be a foot or two or three, but
 22 it's very small in terms of feet. It's the
 23 higher pressure events that will get you
 24 eight, ten feet away. I don't think that's

252

1 what we have here.
 2 Q. And your 2 psi is just an estimate, it
 3 could be less than that; right?
 4 A. It could be a little less, yeah, I
 5 agree.
 6 Q. Is there any physical evidence that the
 7 lid separated from the pot and forcefully
 8 sprayed or are you relying on her
 9 description?
 10 A. I think her description is the only
 11 thing one way or the other.
 12 Q. There is no damage to the pot that would
 13 corroborate that; correct?
 14 A. Correct. Yes, that's correct. That's
 15 correct.
 16 Q. If Ms. Durham opened the pot and spilled
 17 the contents on the counter, you would -- you
 18 would not have an opinion that the product
 19 was defective, would you?
 20 A. Yeah. So if we're assuming that she
 21 opened it when there was essentially no
 22 pressure left and then spilled it on herself
 23 then I would say yeah, then that doesn't --
 24 then the pressurized release opinions don't

253

1 really apply.
 2 Q. Okay. And that would be true if it was
 3 filled high and she just tipped it when she
 4 was taking the lid off or moving it or
 5 something; right?
 6 A. That's true.
 7 Q. And you don't know how much liquid was
 8 ejected, quantity?
 9 A. No, I don't think anybody measured the
 10 quantity. I think it was just described as I
 11 already described it, but I don't think
 12 anybody measured it.
 13 Q. But it also wouldn't be inconsistent
 14 with the amount of liquid in the spill
 15 either; right?
 16 A. Um, if the amount of liquid was small
 17 then that would not be consistent with
 18 dumping the whole contents, but since nobody
 19 measured it, I guess nobody measured it,
 20 right. I don't know the value.
 21 Q. Well, I'm not asking you -- I mean, if
 22 you dump the whole contents it's different
 23 than if you jostled it and a little -- and a
 24 cup came out or something, right? You can't,

254

1 you can't by the quantity distinguish a spill
 2 from an ejection, correct?
 3 A. Oh. Oh, so -- oh, well, no. So, okay,
 4 I think I misunderstood your previous
 5 question. So you're now suggesting there is
 6 a hypothetical where you can shake this in
 7 some magical way and have contents come out,
 8 hit the counter, roll down the counter and
 9 then reach your body? Is that what you're
 10 suggesting in your hypothetical?
 11 Q. I'm asking --
 12 A. Am I understanding that right?
 13 Q. -- based on the amount of liquid that
 14 was out of the pot, can you distinguish
 15 between a spill or a ejection?
 16 A. Well, if the amount of liquid out of the
 17 pot is very small or as described, as she
 18 described the event, then if it were some --
 19 somehow a gravity-based spill,
 20 non-pressurized, I don't see how it could get
 21 to her body and cause these injuries.
 22 I think in order for a gravity
 23 based-spill to do that, you have to lose all
 24 the contents. It has to be a full, a full

255

1 tip. It can't be -- it can't be just a
 2 little shake like you're sort of implying. I
 3 don't -- I don't see how that could be
 4 realistic.
 5 Q. You're completely discounting the
 6 possibility of a partial spill?
 7 A. No, no. You're completely -- your
 8 hypothetical doesn't provide any realistic
 9 fashion in which a small quantity spill
 10 driven by gravity would reach her body even
 11 if she was close to the counter. There is
 12 no -- there is no -- there is nothing in your
 13 hypothetical that implies that that could be
 14 in any way realistic.
 15 Q. Are her injuries consistent with the pot
 16 being dropped?
 17 A. If the contents are disgorged from the
 18 pot before it, you know, reaches counter
 19 height then it could be consistent, but if
 20 they don't get disgorged until it's already
 21 fallen past the counter height, then probably
 22 not because I don't know how it could get on
 23 her thigh at that point. So I think that we
 24 have to assume that the contents are leaving

256

1 while it's still at counter height
 2 approximately.
 3 Q. If the unit was sitting on the counter
 4 and the contents were ejected under pressure,
 5 would you expect to see burns above the
 6 height of the counter?
 7 A. Not necessarily. If the pressure is low
 8 like we've already discussed and there are,
 9 you know, there is a foot or two between her
 10 and the pressure cooker, then after being
 11 ejected horizontally it will start to fall
 12 and so you could get injuries lower down.
 13 So they don't have to be above the
 14 counter. If the pressure was a little higher
 15 and the contents came out horizontally with a
 16 very high velocity, then I think you would at
 17 least expect contact with her body, you know,
 18 at waist level or above. Maybe not burns,
 19 but certainly contact, but I think if the
 20 pressure is low you can get contact below the
 21 waist.
 22 Q. So you exclude the possibility of a
 23 gravity spill or a spill based on her
 24 testimony; correct?

257

1 A. That's true.
 2 Q. There is no scientific basis for doing
 3 that. You're just accepting what she says;
 4 right?
 5 A. Well, no. I mean, in the hypotheticals
 6 you gave me for a gravity-based spill, only a
 7 gravity-based spill which would disgorge the
 8 whole contents I think could be consistent
 9 with the injuries alone if we ignore her
 10 testimony and just look at the injuries, but
 11 a partial like shaking and a little bit of
 12 burping out or shaking gravity and having a
 13 little spill out the top, I don't think that
 14 could lead to her injuries at all. So those
 15 two hypotheticals, only one of them would
 16 count.
 17 Q. Okay. You'd agree that some volume of
 18 contents came out of the pot? That's a basis
 19 for your opinion; right?
 20 A. Well, I think that has to be true in
 21 order for her to be injured. I think that is
 22 true.
 23 Q. Okay. And you don't know the volume of
 24 the contents that came out; right?

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1 A. That's true.
 2 Q. All right. Well let's call it X.
 3 Whatever it is, it's X.
 4 A. Okay.
 5 Q. Couldn't the same X amount of contents
 6 come out of a partial spill, however that
 7 might happen?
 8 A. So if that X is large, like let's say
 9 it's all or nearly all of the contents, then
 10 I think a gravity-based spill could lead to
 11 the injuries that we see here, but if X is
 12 small meaning it's nowhere near the full
 13 contents, it's closer to what she described
 14 meaning just some liquid, no food, then what
 15 you're dealing with is a gravity spill that
 16 isn't large, meaning that you have to now
 17 somehow realistically describe how you can
 18 get a good sideways velocity off of a tiny or
 19 a small X value spill, which I don't think
 20 can be done realistically, and you certainly
 21 haven't provided any type of realism to that
 22 kind of hypothetical, and I don't see that
 23 you could. I just don't see it.
 24 Q. So you're saying people that have

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1 burned, been burned with pots of boiling
 2 water only get burned by spilling the entire
 3 pot?
 4 A. No. If the pot of boiling -- if the pot
 5 of boiling water is full, okay, up to the
 6 brim and you shake the pot, you can get the
 7 top half inch of water, three quarters, maybe
 8 a full inch of water coming out and you could
 9 be really badly burned.

10 But if your pot has say two,
 11 three, four inches, it's only half full and
 12 you shake it, the sloshing is not going to
 13 lead to a high amount of boiling water coming
 14 out. It's just not. I don't see how that
 15 hypothetical would lead to a high amount
 16 coming out.

17 And then the amount that comes
 18 out, it's mostly just going up and down. It
 19 will have almost no sideways velocity in that,
 20 in the hypothetical, and so it's really not
 21 going to reach you in any significant amount.

22 And that's why I'm saying that in
 23 these conditions with your hypothetical, it
 24 just doesn't make realistic sense. It just

260

1 doesn't. I mean, you'd have to find a way to
 2 describe that in that way that it does, just
 3 I don't see it.

4 Q. You keep limiting my question to this
 5 shaking scenario. Where did that come from?

6 A. Well, why don't you -- why don't you
 7 actually fill out the hypothetical? You're
 8 suggesting a spill that's not the full
 9 contents, which means it doesn't tip over,
 10 right. If it tipped over all the way it
 11 would be a full content spill. So why don't
 12 you provide me with a complete hypothetical
 13 and I will do my best to address it.

14 Q. You don't think it's possible that a
 15 partial spill occurred. You don't think --

16 A. Why don't --

17 Q. It's totally inconceivable?

18 A. Why don't you give me a hypothetical in
 19 which you describe this partial spill and I
 20 will consider it. Because I've answered
 21 everything else the best I can, but if you
 22 give me a full hypothetical with this partial
 23 spill, so tell me exactly what happened and
 24 what I'm supposed to assume, then I will go

261

1 ahead and address it, otherwise I can't
 2 answer it. It's just the hypothetical
 3 doesn't make any sense.

4 Q. I'm not asking you a hypothetical
 5 question. I'm asking you a very specific
 6 question. The question is, is it possible
 7 under any circumstance to have a partial
 8 spill of contents? Yes or no?

9 A. Under gravity. Okay. Well, let's start
 10 with the hypo -- so what you are asking me is
 11 a hypothetical.

12 Q. Yes or no? Is it possible?

13 A. You have to give me more information.
 14 I've already answered this many times. Why
 15 don't you give me more information and I'll
 16 be happy to address it, right. I mean, an
 17 alien could land on the roof tomorrow. Sure.
 18 Why not? It hasn't happened yet, but it
 19 could. I can't rule it out. I like aliens.
 20 They could show up in my backyard this
 21 afternoon, but you need to give me specifics,
 22 right. How full is it? What are the
 23 contents? What is the angle at which it
 24 tips? How does it stop tipping when it

262

1 reached that angle? How fast does the angle
 2 change? Does it go all the way horizontal?
 3 Is it pointing towards her, to the side, away
 4 from her? Is she interacting with it in some
 5 way? I mean, you have -- without those
 6 pieces, how am I supposed to answer that?

7 What I am telling you is I can't
 8 conceive of a pot that's sitting on the
 9 counter, somehow gets jostled, no pressure,
 10 and a small amount of the contents leaves,
 11 hits the counter, move vertically off the
 12 counter -- horizontally off the counter and
 13 reach her. I just don't see that
 14 hypothetical making any sense at all, which
 15 is why if you want to give me a hypothetical
 16 that makes sense, please do so, but I just, I
 17 just don't see your hypothetical making any
 18 sense, and it is hypothetical. Clearly what
 19 you're asking me is a hypothetical.

20 Q. So you can't answer my question without
 21 all that specific information?

22 A. I've already answered that question and
 23 told you that I don't think it's realistic,
 24 and I've already said that many times over,

263

1 and I said that if you want me to consider
 2 something specifically I would be happy to do
 3 so, but for some reason you don't want to
 4 give that to me, and that's okay. I
 5 understand. You don't want to. That's okay.
 6 MR. CALLAHAN: Can we take a
 7 ten-minute break? I'll review my notes.
 8 MR. KRESS: Sounds good.
 9 THE WITNESS: Okay.
 10 THE VIDEOGRAPHER: Off the record.
 11 The time is 6:18.
 12 (Recess; 6:18 p.m.)
 13 - - -
 14 (Resumed; 6:29 p.m.)
 15 THE VIDEOGRAPHER: We're back on
 16 the record, 6:29.
 17 BY MR. CALLAHAN:
 18 Q. In your report, sir, you state that
 19 Instant Brands has used a protective screen
 20 to protect float valves in other products?
 21 A. Yes.
 22 Q. When did they do that?
 23 A. You know, I don't recall the date of
 24 that, but I think it's a Duo, not the Duo

264

1 Plus, and I think it's a number of years ago.
 2 I don't think that -- I don't recall the
 3 date, but I think it's more than a few years
 4 ago. You know, it's not current -- I don't
 5 know that it's current, but we bought it a
 6 number of years ago.
 7 Q. You don't know why that change was made,
 8 do you?
 9 A. No, I haven't seen any engineering
 10 change documents.
 11 Q. And can you exclude the possibility that
 12 it was considered a design improvement?
 13 A. I mean, I'd like -- if they're going to
 14 prove that through engineering, I'd like to
 15 see it. I don't see that, but I'd love to
 16 see them prove that.
 17 Q. Have you considered that possibility?
 18 A. No. Well, to me it looks like it's a
 19 cost saving measure, but like I said, if you
 20 have documentation or proof that they did an
 21 engineering analysis and proved that it's
 22 better, I'd love to see that.
 23 Q. Why do you say it's a cost saving
 24 measure?

265

1 A. Well, look at it. It's half the
 2 material. I don't think you'd save a lot
 3 though.
 4 Q. Do you have any evidence it was a cost
 5 saving measure?
 6 A. Nope, but you asked me what it looked
 7 like to me and that's what it looked like to
 8 me. Like I said, I'd love to see their
 9 engineering change order and their
 10 engineering documents behind the choice.
 11 Q. Who made the change?
 12 A. I don't know which entity in the stream
 13 made that decision, only that Instant Pot
 14 sold it.
 15 Q. Is it your opinion that the product
 16 using the double screen is not susceptible to
 17 clogging?
 18 A. I think the double screen mitigates the
 19 risk of clogging. Like I said, you can never
 20 be 100 percent, but I think it does mitigate
 21 the risk of clogging, right, because that's
 22 why they use it for the pressure relief
 23 valve.
 24 Q. Have you ever examined an Instant Pot

266

1 that used the double screen?
 2 A. Well, you're looking at one. I don't
 3 remember which case this was for, which case
 4 we had with that model, so I don't recall
 5 which case that was.
 6 Q. Are you aware of any incidents where it
 7 was demonstrated a pressure -- an Instant Pot
 8 pressure cooker with that double screen
 9 device clogged?
 10 A. That I don't know.
 11 Q. Turning to your demonstration, the
 12 potato demonstration we talked about earlier,
 13 do you have any photographs or videos of that
 14 demonstration?
 15 A. I don't know.
 16 Q. Do you have any photographs or videos of
 17 any demonstration demonstrating that clogging
 18 is potential?
 19 A. I don't know.
 20 Q. Do you have any notes relating to those
 21 demonstrations?
 22 A. I don't know.
 23 Q. Do you have any written protocols
 24 related to those demonstrations?

267

1 A. I don't know.
 2 Q. All you have is what's in your head?
 3 A. Well, that's all that I definitely have.
 4 The others I don't know.
 5 Q. You referenced in your report this
 6 demonstration; correct?
 7 A. I think I referenced that I have
 8 experienced this type of clogging. If you'd
 9 like to read me the sentence I'd be happy to
 10 look at it.
 11 Q. On Page 7 you say, "Prior testing
 12 experience by BEAR has shown certain foods
 13 are capable of clogging pressure cooker
 14 valves."
 15 You referenced this prior testing;
 16 right?
 17 A. Yeah.
 18 Q. And you relied on it in your opinions;
 19 right?
 20 A. As part of my experience, yeah.
 21 Q. And to be complete, that sort of testing
 22 would have -- should have been produced;
 23 right?
 24 A. No, as part --

268

1 Q. If you're giving me the gist of it --
 2 A. It's part of my experience and I think I
 3 can, I think I'm certainly able to reference
 4 my prior experiences as they relate to items
 5 pertinent to the case.
 6 Q. In writing your report did you consider
 7 looking for any evidence, photos, notes,
 8 protocols related to this demonstration?
 9 A. I don't think so. I don't recall.
 10 Q. When was the last time you testified
 11 about this potato demonstration?
 12 A. I don't know.
 13 Q. Do you know what type of potatoes you
 14 used?
 15 A. I don't recall.
 16 Q. Do you know if they were cooked or
 17 uncooked?
 18 A. I don't recall. I believe they were --
 19 we might have done them both ways actually.
 20 I guess I don't recall.
 21 Q. Do you know how big of pieces you used?
 22 A. No.
 23 Q. I asked you several times about
 24 quantifying the risk of a float valve clog

269

1 under op -- under normal operating
 2 conditions, real world operating conditions,
 3 and you told me several times you cannot
 4 quantify that risk. My question is, is that
 5 risk just unknown to you or is it completely
 6 unknowable to anyone?
 7 A. I think if someone were to perform a
 8 complete statistical study, which we also
 9 talked about at great length, then you could
 10 come up with a value for likelihood if you
 11 wanted to. I think you could.
 12 Q. Is there some likelihood that you don't
 13 have to address that as design?
 14 A. I think that if you can prove that the
 15 likelihood is close to zero and you believe
 16 that a design change is impractical, then you
 17 could just warn against it, but only under
 18 that circumstance.
 19 I think that if a design change is
 20 practical and feasible and doesn't
 21 significantly change the design or the cost,
 22 meaning you have to redesign the whole
 23 product to do so, then I think it ought to be
 24 done especially if you don't know the

270

1 statistics. I think it ought to be done,
 2 period. You shouldn't just ignore it because
 3 you think it might not happen.
 4 Q. You said close to zero. What does close
 5 to zero mean?
 6 A. I don't have a number for that. I, I
 7 cannot give you a number.
 8 Q. But your opinion is if it's close to
 9 zero you don't have to design against it.
 10 What's that -- what does close to zero mean?
 11 If you're an engineer and you're presented
 12 with this problem, what does close to zero
 13 mean?
 14 A. Yeah. So as an engineer I would expect
 15 the engineer who performed the work to
 16 present me with an analysis that demonstrates
 17 why they believe it is close to zero. I
 18 would need to review that work and evaluate
 19 the statistics, and then I could tell you
 20 whether or not it was close to zero. That's
 21 what I would need to do it. I cannot give
 22 you a number standing here today.
 23 Q. I'm sharing my screen. It's a photo I
 24 think provided by defense to you. It is Set

271

1 1_0974. Do you have -- can you see that,
2 sir?

3 A. I can.

4 Q. Do you know what that is?

5 A. That looks like a disassembled float
6 valve.

7 Q. Is it the float valve from the Durham
8 pot?

9 A. I don't see any identification on here,
10 but if it were represented to be from the
11 Durham pot I wouldn't disagree.

12 Q. I will represent that it is. Do you see
13 any signs -- well, let me ask it this way.
14 You testified previously you have seen signs
15 of food particles stuck on the inside of the
16 Instant Pot after an incident; correct?

17 A. I -- no, I did not say Instant Pot. I
18 said that I've seen pressure cookers which
19 had not been cleaned after use and they were
20 extremely disgusting, nothing like what this
21 looks like. This one has clearly been
22 cleaned.

23 Q. Okay. And is it your opinion this valve
24 has been cleaned, this valve stem?

272

1 A. To me it looks like it's been cleaned.

2 Q. You don't see any evidence of food
3 debris on it?

4 A. Well, I mean I see some particles that
5 may or may not be food. They may just be
6 just discoloration of the cylinder, and if
7 that were the case then that still means it
8 just -- it got cleaned. That just means it
9 didn't get, you know, perfectly cleaned.

10 Q. Looking at this valve stem, where was
11 the clog? Can you tell me?

12 A. I can't tell you. I can't tell you
13 exactly where the clog is. You've already
14 asked that and I'm going to give you the same
15 answer. I can't tell you exactly.

16 Q. Well, I've never shown you this valve
17 stem, have I?

18 A. But the question is the exact same and
19 the answer is the exact same. You can show
20 me 20 pictures of the valve stem if you'd
21 like.

22 Q. Can you tell me who removed the valve
23 stem and cleaned it?

24 A. Well, first of all, you're assuming that

273

1 somebody removed the valve stem and cleaned
2 it. I'm just saying that it got cleaned.

3 I'm not saying whether or not it was removed.

4 It might have been removed. It might not.

5 Q. Well, how did someone clean it if it
6 wasn't removed?

7 A. So why are you saying that it needed to
8 be removed to be cleaned? Because what if
9 the clog was only on the bottom portion
10 that's accessible without having to remove it
11 and you could easily clean it without
12 removing it.

13 Q. Where would that clog be?

14 A. It would be in the section that would be
15 visible from the underside of the lid.

16 Q. Would the clog not have to be in the
17 orifice surrounding the valve stem?

18 A. It could be in or over. It doesn't have
19 to be inside the cylinder, but it could be.

20 Q. Do you see any food particles or debris
21 inside the silicon cap of the, of the valve?

22 A. I do not, but I don't see how you could
23 even get food particles inside the cap when
24 it's still attached. I'm not even sure how

274

1 you would do that.

2 Q. Isn't this cylinder open to the bottom?

3 A. Not necessarily. I think there is a
4 chamber that connects the side holes to the
5 side holes. We would have to look at a
6 photograph of the end to see if the chamber
7 goes all the way to the bottom.

8 Q. Not --

9 A. I just don't recall on this one.

10 Q. Not necessarily. You've looked at the
11 pot, haven't you, or not?

12 A. Like I said, I don't believe that we
13 disassembled the float valve.

14 Q. This is where the clog you claim
15 occurred; correct?

16 A. So I think that you're -- it seems like
17 you're getting a little upset. The -- the
18 answer is the clog could have been over the
19 top of the orifice holes and around the
20 annular openings. Right, it doesn't have to
21 go in. That's one potential, or the clog
22 could have gone into the hole but not far,
23 maybe just into the hole and also over the
24 top and around the annular opening, or the

275

1 clog could have gone all the way in and
 2 somebody has cleaned this thoroughly, or it
 3 didn't go all the way in at all. It was only
 4 on the outside, only on the surface, and
 5 that's all that it ever was. It could be any
 6 of those things and I can't tell you which of
 7 those it is.

8 Q. Because they're all just hypotheticals
 9 at this point in time; right?

10 A. Well, they're hypotheticals that are
 11 consistent with the evidence that we have in
 12 the case and they're also realistic. The
 13 hypotheticals you've been throwing at me
 14 don't seem to be bounded by realism.

15 Q. My question is, wherever this
 16 hypothetical clog occurred, it was in contact
 17 with this valve stem; correct?

18 A. Yes.

19 Q. And at no time during your examination
 20 of the pot did you remove the valve stem to
 21 examine it; correct?

22 A. That is still true, yes.

23 Q. And did you ever consider looking at the
 24 valve stem during your examination?

276

1 A. Well, we did look at it externally, but
 2 I don't think we ever considered
 3 disassembling and removing it.

4 Q. Disassembling is just popping the cap
 5 off and letting it fall into your hand;
 6 right?

7 A. Yes.

8 Q. No tools are required?

9 A. No. No, but it does -- it does require
 10 you to take the cap off, which means that
 11 you'll never be able to get it on exactly the
 12 same way it was before, so that's why I
 13 didn't feel like we needed to change it.

14 MR. CALLAHAN: That's all I have.
 15 Thank you.

16 THE WITNESS: Okay.

17 MR. KRESS: Nothing here.

18 THE VIDEOGRAPHER: This completes
 19 the videotape deposition. The time is 6:45.
 20 We're now going off the video record.

21 (Witness excused.)

22 - - -

23 (Deposition concluded at 6:45
 24 p.m.)

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1
 2 CERTIFICATION
 3

4 I, JARED E. BITTNER, RPR and NJ CSR
 5 License No. 30XI00235600, do hereby certify
 6 that prior to the commencement of the
 7 examination, DAVID RONDINONE, was duly
 8 remotely sworn by me to testify to the truth,
 9 the whole truth and nothing but the truth.

10 I DO FURTHER CERTIFY that the
 11 foregoing is a verbatim transcript of the
 12 testimony as taken stenographically by me at
 13 the time, place and on the date hereinbefore
 14 set forth, to the best of my ability.

15 I DO FURTHER CERTIFY that I am neither
 16 a relative nor employee nor attorney nor
 17 counsel of any of the parties to this action,
 18 and that I am neither a relative nor employee
 19 of such attorney or counsel, and that I am
 20 not financially interested in this action.

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Jared E. Bittner
 JARED E. BITTNER, RPR
 NJ CSR No. 30XI00235600
 Notary Public
 Dated: September 15, 2022

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